

MEMORANDUM

State of Alaska

Department of Law

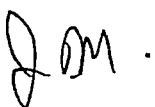
TO: Honorable Mark S. Hickey
Commissioner
Department of Transportation
and Public Facilities

DATE: January 26, 1990

FILE NO.: 663-90-0255

TEL. NO.: 465-3603

SUBJECT: PLO 601 and width of
Glacier Highway through
Forest Service Land

FROM: Jack B. McGee 
Assistant Attorney General
Transportation-Juneau

In your memo to me dated January 3, 1990, you raised the question of whether Public Land Order 601 together with D.O. 2665 created a right-of-way of 50 feet on either side of the center-line of the Glacier Highway as it passes through the Auke Village Recreation Area. The Forest Service has apparently taken the position that the right-of-way extends only to the limits of the existing roadway.

Facts:

According to DOT/PF, the segment of the Glacier Highway in question was constructed between 1922 and 1924 and is located within the Tongass National Forest. The area in question was withdrawn from the public domain and placed within the Tongass National Forest by Presidential Proclamation 846, issued February 16, 1909. See appendix 1.

On August 10, 1949, PLO 601 was issued by the Secretary of Interior. PLO 601 created a 100 foot withdrawal for all local roads under the jurisdiction of Interior (50 feet on either side of the center-line of the road). D.O. 2665, issued on October 16, 1951, changed the status of the withdrawal created by PLO 601 to a road easement or right-of-way.

On May 16, 1952, PLO 829 was issued by the Secretary of Interior. PLO 829 withdrew the Auke Village Recreation Area from all forms of appropriation under public land laws, and designated it as a recreation area under the authority of the Forest Service, Department of Agriculture. This withdrawal was subject to valid existing rights. See appendix 2.

PLO 829 was issued pursuant to Executive Order 9337. Executive Order 9337, issued on April 24, 1943, authorized the Department of Interior to withdraw and reserve lands ". . . owned or controlled by the United States." Executive Order 9337 also

empowered Interior to modify or revoke any previous withdrawals or reservation of such lands. 1/ See appendix 3.

Analysis:

Since PLO 601 applied to all roads under the authority of the Department of Interior, the question is whether the Glacier Highway, a road through a National Forest, was under the jurisdiction of Interior at the time PLO 601 was issued.

Authority over roads located within Alaska was originally held by the Board of Road Commissioners by virtue of the Act of January 27, 1905, ch. 277, 33 Stat. 616 (1905). This Act conferred broad road powers on the board of road commissioners, giving it the authority:

. . . to locate, lay out, construct, and maintain wagon roads and pack trails from any point on the navigable waters of said district, i.e. Alaska to any town, mining or other industrial camp or settlement, or between any such town, camps, or settlements therein, if in their judgment such roads or trails are needed and will be of permanent value for the development of the district;

Pub. L. No. 26, ch. 227, 33 Stat. 616 (1905).

In 1932, the road authority held by the Board of Road Commissioners in Alaska was transferred to the Department of Interior by the Act of June 30, 1932, ch. 320, 47 Stat. 446 (1932). Sections 2 and 3 of this Act read as follows:

Sec. 2. The Secretary of the Interior shall execute or cause to be executed all laws pertaining to the construction and maintenance of roads and trails and other works in Alaska, heretofore administered by said board of road commissioners under the direction of the Secretary of War; and all appropriations heretofore made, and now available, or that hereafter may be made, for expenditure by said board for meeting the cost of such work in the Territory of Alaska, are hereby transferred to the Secretary of the Interior, to be

1/ Executive Order 9337 was in effect until May 26, 1952, when it was superseded by Executive Order 10355.

thereafter administered in accordance with the provisions of this Act; and the said board is directed to turn over to the Secretary of the Interior all equipment, materials, supplies, papers, maps, and documents, or other property utilized in the exercise of such powers, for the use of the said Secretary in the administration of the construction and maintenance of roads, tramways, ferries, bridges, and trails, and other works in the Territory of Alaska, heretofore, administered by said board.

Sec. 3. That with the approval of the President, the Secretary of the Interior shall have power, by order or regulation, to distribute the duties and authority hereby transferred, and appropriations pertaining thereto, as he may deem proper to accomplish a more economical and effective organization thereof, and to make rules and regulations governing the use of roads, trails, and other works, including the fixing and collection of tolls where deemed necessary and advisable in the public interest.

Pub. L. No. 218, ch. 320, 47 Stat. 446 (1932).

At the time PLO 601 and D.O. 2665 were issued it is clear that the Department of Interior held broad road authority relating to the construction and maintenance of roads in Alaska. Neither the 1905 Act nor the 1932 Act indicate that public roads located within national forests in Alaska are not within the road authority of the Department of Interior. Moreover, 16 U.S.C.S. § 525 (1978) specifically granted the Department of Interior the authority to grant rights of way and approve surveys for ". . . a wagon road . . . or other highway over and across any national forest where in his judgment the public interests will not be injuriously affected thereby." 2/

2/ 16 U.S.C. § 525 was originally enacted on March 3, 1899 by ch. 427, § 1, 30 Stat. 1233 (1899). Though it was repealed in 1976 by 90 Stat. 2793 (1976), 16 U.S.C. § 525 was in effect when this segment of the Glacier Highway was first constructed. A copy of § 525 is attached as appendix 4.

Prior to and at the time the relevant section of the Glacier Highway was initially constructed in 1922-24, Interior, under 16 U.S.C.S. § 525, had jurisdiction over the question whether or not the road could be built. And given Interior's continuing duty under this statute to judge whether the road would "injuriously" affect the "public interests," Interior continued to have jurisdiction over the road after it was constructed. On the other hand, it is clear that the Department of Agriculture, which has general management authority over National Forests under 16 U.S.C.S. § 551 (1978), did not have any authority to create a road right-of-way for the Glacier Highway at the time the road was built (1946-47). ^{3/} The Department of Agriculture did not get the authority to grant road rights-of-way across national forest lands until 16 U.S.C.S. § 533 (1978) was enacted in 1964 by the Act of October 13, 1964, Pub. L. 88-657, 78 Stat. 1089 (1964). A copy of § 533 is attached as appendix 5. The legislative history of Pub. L. 88-657 (16 U.S.C.S. § 533 (1978)) is clear on this; House Report No. 1920, which accompanied Pub. L. 88-657, specifically addressed the matter as follows:

Rights of ingress and egress

Although the Secretary of Agriculture was given statutory authority (act of February 1, 1905, 33 Stat. 628, 16 U.S.C. 551) to administer the national forests at the time Congress transferred jurisdiction from the Department of Interior to the Department of Agriculture, the act has not been construed as including the power to grant easements across national forest lands. Moreover, by letter between the Secretaries of Agriculture and Interior dated June 8, 1905 (33 L.D. 609-610), the two Secretaries agreed that the Secretary of Agriculture would not make grants which would amount to easements burdening the lands held in the ownership of the United States. Thus, from the very inception of administration of the national forests by the Secretary of Agriculture, he has lacked explicit authority to grant easements across national forest lands; nor has the Secretary assumed that such authority was implicit in

^{3/} 16 U.S.C.S. § 551 (1978) became law by the Act of February 1, 1905, 33 Stat. 628 (1905).

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his responsibility for administering national forests.

H.R. Rep. No. 1920, 88th Cong., 2nd Sess. 1964 U.S. Code Cong. and Ad. News, 3994, 3995; emphasis added.

Conclusion:

From the above analysis it is clear that the Department of Interior had road authority over all roads within National Forests from March of 1899 (the time 16 U.S.C. § 525 was enacted) up until October of 1964 (the time 16 U.S.C. § 533 was enacted). Moreover, by virtue of E.O. 9337 (April 24, 1943), Interior had the authority, delegated by the President, to modify any previous land withdrawal. So, when PLO 601 was issued in 1949, Interior had full legal authority to create a road withdrawal of fifty feet on either side of the center-line of the Glacier Highway. It follows, then, that the width of the Glacier Highway right-of-way, as it passes through the Auke Village Recreation Area, is 100 feet wide.

JBM:ebc

Attachments: Appendices 1-5

7/16/09 1111

TONGASS NATIONAL FOREST

ALASKA

(SECOND PROCLAMATION)

By the President of the United States of America

A Proclamation

Proc
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WHEREAS, an Executive Order dated July second, nineteen hundred and eight, consolidated the Alexander Archipelago and Tongass National Forests under the name of the Tongass National Forest;

And whereas, it appears that the public good would be promoted by adding to the Tongass National Forest certain lands within the Territory of Alaska, which are in part covered with timber;

Now, therefore, I, THEODORE ROOSEVELT, President of the United States of America, by virtue of the power in me vested by the Act of Congress, approved June fourth, eighteen hundred and ninety-seven, entitled, "An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," do proclaim that the Tongass National Forest is hereby enlarged and that its boundaries are as shown on the two parts of the diagram forming a part hereof, and further described as follows:

All of the public land lying within boundaries described as follows: Beginning at the point where the International Boundary Line between the Territory of Alaska and the Dominion of Canada intersects the left bank of the Skagway River; thence southwesterly down the left bank of the said river to a point five miles above the center of the town of Skagway; thence in a southeasterly and southwesterly direction, at a distance of five miles from the center of said town, to the east shore of Chilkoot Inlet; thence southerly along said shore to Lynn Canal; thence southeasterly through Lynn Canal and Favorite Channel to a point on the shore of Young Bay due east of the head of Hawk Inlet; thence westerly to the head of Hawk Inlet; thence in a general southwesterly, northwesterly and southwesterly direction through Hawk Inlet, Icy Strait, passing between Pleasant Island and Lemesurier Island, through Inian Passage, and Cross Sound to a point due west of Cape Bingham; thence southeasterly to a point sixty miles west of Cape Muzon; thence easterly to Cape Muzon; thence in a general easterly, northerly, northeasterly, and northwesterly direction along the said International Boundary Line to the summit of Elbow Mount, at an elevation of 4,235 feet; thence northwesterly to the

summit of the most westerly of Twin Peaks, at an elevation of 7,180 feet; thence northwesterly to the summit of a Peak, having an elevation of 5,821 feet, on the said International Boundary Line; thence in a general northwesterly direction along the said International Boundary Line to the summit of a peak known as Devils Paw, having an elevation of 8,000 feet; thence in a southwesterly direction to the summit of a peak, having an elevation of 5,977 feet, in Mendenhall Glacier; thence northwesterly to the summit of a peak, having an elevation of 6,550 feet, on the said International Boundary Line; thence in a general northwesterly direction along the said International Boundary Line to the point where it intersects the left bank of the Skagway River, the place of beginning; and embracing all islands within said described boundaries;

Also all of the public land lying within boundaries described as follows: Beginning at the point where the sixtieth parallel of latitude intersects the *International Boundary Line between the Territory of Alaska and the Dominion of Canada*; thence due west along the said parallel to the middle of the channel of Yakutat Bay; thence in a southwesterly direction along the middle of the channel of said bay to a point due west of Ocean Cape; thence in a southeasterly direction to a point on the fifty-ninth parallel of latitude opposite the mouth of the Alsek River; thence easterly along said parallel to its intersection with the shore of Dry Bay; thence in a northwesterly direction along the shore of said bay to the left bank of the most easterly outlet of Alsek River; thence in a general northwesterly direction along the left bank of said river to a point midway between the mouth of the river and the intersection of the river with the said International Boundary Line; thence in a northwesterly direction to the foot of Yakutat Glacier; thence in a northerly direction to the summit of Mount Ruhamah on the said International Boundary Line; thence in a northwesterly direction along the said International Boundary Line to its intersection with the sixtieth parallel of latitude, the place of beginning; and embracing all islands within said described boundaries;

Excepting from the force and effect of this proclamation the several areas contained within boundaries formed by circles described with a radius of five miles, each, from the centers of the following named towns and settlements, to wit: Juneau, Douglas, Treadwell and Sitka; also the several areas contained within boundaries formed by circles described with a radius of one mile, each, from the centers of the following named towns and settlements, to wit: Snettishan, Sumdum, Windham, and Loring; also the areas contained within boundaries formed by circles described with a radius of two miles, each, from the centers of the towns of Petersburg and Wrangell; also Annette and Pennock Islands; also all the northern portion of Gravina Island which lies above a line running from the head of Vallenar Bay southeasterly to the head of Blank Inlet; also all that portion of Revillagigedo Island lying southwest of a line beginning at a point at the head of Wards Cove; and running thence in a southeasterly direction, at a distance of two miles from the shores of Tongass Narrows to a point on Carroll Inlet; and also all that portion of Kasaan Peninsula, forming a part of Prince of Wales Island, which lies southeast of a line beginning at a point on Kasaan Bay due west of the United States Location Monument Number 5, and running thence, north 44° 42' east, 6,996 feet (approximately) to the most southwesterly point on the bay known as Lyman Anchorage:

Provided, that this proclamation shall not be so construed as to deprive any person of any valid right possessed under the Treaty for the cession of the Russian possessions in North America to the United States, concluded at Washington on the thirtieth day of March, eighteen hundred and sixty-seven, or acquired under any act of Congress relating to the Territory of Alaska.

The withdrawal made by this proclamation shall, as to all lands which are at this date legally appropriated under the public land laws or reserved for any public purpose, be subject to, and shall not interfere with or defeat legal rights under such appropriation, nor prevent the use for such public purpose of lands so reserved, so long as such appropriation is legally maintained, or such reservation remains in force.

This proclamation shall not prevent the settlement and entry of any lands heretofore opened to settlement and entry under the Act of Congress approved June eleventh, nineteen hundred and six, entitled, "An Act to provide for the entry of Agricultural lands within forest reserves."

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 16th day of February,
[SEAL.] in the year of our Lord one thousand nine hundred and nine, and of the Independence of the United States the one hundred and thirty-third.

THEODORE ROOSEVELT

By the President:

ROBERT BACON
Secretary of State.

[No. 846.]

1/216

PLO-879

5-16-57

[Public Land Order 638]

ALASKA

RESERVATION OF LANDS ADJACENT TO OR WITHIN CHUGACH OR TONGASS NATIONAL FOREST FOR USE BY FOREST SERVICE, DEPARTMENT OF AGRICULTURE, AS ADMINISTRATIVE SITES, RECREATION AREAS, OR FOR OTHER PUBLIC PURPOSES; REVOKING EXECUTIVE ORDER NO. 8182 OF JULY 2, 1938

By virtue of the authority vested in the President by the act of June 4, 1897 (30 Stat. 34, 35; 16 U. S. C. 473), and otherwise, and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Subject to valid existing rights, the public lands within the following-described areas adjacent to or within the

Chugach or the Tongass National Forest in Alaska are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining laws but not the mineral-leasing laws, and reserved for use by the Forest Service, Department of Agriculture, as administrative sites, recreation areas, or for other public purposes as indicated:

CHUGACH NATIONAL FOREST

COOPER CREEK PUBLIC CAMP AND PICNIC GROUNDS

A. Beginning at a point, from which the center line of the Seward-Kenai highway on the left bank at mean high water line at the confluence of Cooper Creek with Kenai River, latitude 60°29' N., longitude 149°53' W., bears south, 100 feet, thence: S. 86° W., 29.80 chains along the north right-of-way line of the Seward-Kenai highway to the mean high water line of Kenai River;

Northeasterly and southerly along the mean high water line of Kenai River to point of beginning.

The tract as described contains 10.35 acres.

B. Beginning at a point from which the beginning point of Tract A bears N. 24° W., 3.43 chains, thence

Southerly, 18.65 chains along the left bank of Cooper Creek;

North, 14.27 chains;

N. 86° E., 7.65 chains along south right-of-way line of Seward-Kenai highway to point of beginning.

The tract as described contains 3.18 acres.

HENEY CREEK PUBLIC SERVICE SITE

A. Beginning at a point on the east right-of-way line of Heney Creek road near Cordova, from which corner No. 5, U. S. Survey 2,610 bears S. 48° W., 1.35 chains, thence

East, 7.75 chains;

South, 8.90 chains;

West, 7.63 chains to east right-of-way line of Heney Creek Road;

N. 3° E., 2.70 chains along said right-of-way line;

N. 3° W., 4.23 chains along said right-of-way line to point of beginning.

The tract as described contains 3.21 acres.

B. Beginning at corner No. 5 of U. S. Survey 2,610, thence

East, 13.55 chains to corner No. 5, U. S. S. 2,610 at the west right-of-way line of the Heney Creek road;

S. 3° E., 3.30 chains along said west right-of-way line;

S. 3° W., 2.80 chains along said west right-of-way line;

West, 14.28 chains;

N. 3° E. 3.83 chains to point of beginning.

The tract as described contains 3.18 acres.

LOWER TRAIL LAKE PUBLIC RECREATION AREA

Beginning at corner No. 3 and M. C. H. E. S. No. 197, on the southerly shore of Lower Trail Lake, thence

Northeasterly, 38.00 chains, approximately, along the southerly shore of Lower Trail Lake to the most easterly point in a cove;

South, 35.00 chains;

West, 32.00 chains, to the east right-of-way line of the Alaska R. R., 100 feet from the center line thereof;

Northerly, 24.00 chains, along the east right-of-way line of the Alaska R. R., to point of beginning.

The tract as described contains approximately 94.00 acres.

PEDERNAK CREEK PUBLIC RECREATION AREA

Beginning at a point from which corner No. 3, Lot 1, U. S. Survey No. 2518 bears S. 20° 30' W., 1.43 chains, thence

North 38° W., 12.50 chains;

North 54° E., 13.00 chains;

South 38° E., 12.50 chains;

South 54° W., 13.00 chains to point of beginning.

The tract as described contains 16.84 acres.

PEDERNAK PUBLIC RECREATION AREA

Beginning at a point on the mean water line on the southwest shore of Kenai Lake, due east of Corner No. 4, Lot A, Tract 1, U. S. Survey No. 2830, thence

West, 17.50 chains;

North, 17 chains, approximately, to the mean water line, Kenai Lake;

Easterly and southerly along the mean water line of Kenai Lake to point of beginning.

The tract as described contains 29.5 acres.

DAVIS CREEK-MUD LAKE PUBLIC RECREATION AREA

Beginning at a point on the south right-of-way line, 50 feet from the center line and perpendicular to Station 66 of the Kenai River Highway, as shown on Bureau of Public Roads plan for proposed Section 5 B-2, approximate latitude 60°32' N., longitude 149°35' W., map of which is on file in the Bureau of Land Management, thence

S. 66° E., 60.00 chains;

S. 24° W., 30.00 chains;

N. 66° W., 60.00 chains;

N. 24° E., 30.00 chains, to point of beginning.

The tract as described contains 180 acres.

QUARTZ CREEK PUBLIC RECREATION AREA

Beginning at a point on mean water line, Kenai Lake, which bears S. 62° W. from Station 480+00 of Kenai River Highway as shown on Bureau of Public Roads plan for proposed Section 5 B-2, approximate latitude 60°29' N., longitude 149°44' W., map of which is on file in the Bureau of Land Management, thence

N. 32° 00' E., 115.00 chains;

N. 29° 30' E., 46.00 chains;

S. 61° 00' E., 77.00 chains;

S. 1° 00' W., 16.00 chains;

S. 31° 30' W., 35.00 chains;

S. 32° 00' W., 59.00 chains;

S. 24° 00' W., 30.00 chains;

S. 34° 30' E., 60.00 chains;

S. 35° 00' E., 50.00 chains;

S. 59° 30' W., 13.50 chains approximately to mean water line of Kenai Lake;

Northwesterly, along mean water line of Kenai Lake to point of beginning.

The tract as described contains 1,259.3 acres.

(OVER)

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the survey stations of the Bureau of Public Roads plans for proposed Section B-2, maps of which are on file in the Bureau of Land Management:

1. A tract of land 8.00 chains in width, on the north right-of-way line, parallel to and 50 feet from the center line of the highway, and 9.00 chains in length between Station 181 and Station 182, approximate latitude 60°30' N., longitude 149°26' W. *1785*
The tract as described contains 4.54 acres.
2. A tract of land 8.00 chains in width, on the south right-of-way line, parallel to and 50 feet from the center line of the highway, and 16.00 chains in length between Station 208 and Station 216, approximate latitude 60°30' N., longitude 149°28' W. *1785*
The tract as described contains 4.33 acres.
3. Beginning at Corner No. 1, H. K. S. No. 60, thence:
N. 20° 11' E., along west boundary of H. K. S. 60 to south right-of-way line of highway;
Northwesterly, parallel to and 50 feet from center line of the highway to a point opposite Station 206;
Southwesterly at right angles to the highway, 6.00 chains; *1785*
Southeasterly, parallel to the highway 12.12 chains;
Northeasterly at right angles to the highway, to the south boundary of H. K. S. 60, a point opposite highway station 208;
N. 64° 23' W., along the south boundary of H. K. S. 60 to point of beginning.
The tract as described contains 7.18 acres.
4. A tract of land 8.00 chains in width, on the southwest right-of-way line, parallel to and 50 feet from the center line of the highway, and 10.60 chains in length, between Station 464 and Station 471, approximate latitude 60°32' N., longitude 149°35' W. *1286*
The tract as described contains 4.3 acres.
5. A tract of land 6.00 chains in width, on the east right-of-way line, parallel to and 50 feet from the center line of the highway, and 12.12 chains in length, between Station 577 and Station 585, approximate latitude 60°33' N., longitude 149°35' W. *1786*
The tract as described contains 7.27 acres.
6. A tract of land 10.00 chains in width, on the west right-of-way line, parallel to and 50 feet from the center line of the highway, and 90.90 chains in length, between Station 580 and Station 640, and all land between the west right-of-way line of the highway and the left bank of Quartz Creek between Station 640 and Station 720, a distance of approximately 151.50 chains, approximate latitude 60°34' N., longitude 149°35' W. *1286*
The tract as described contains 124.90 acres.
7. A tract of land 10.00 chains in width on the southeast right-of-way line, parallel to and 50 feet from the center line of the highway, and 40.90 chains in length between Station 790 and Station 817, approximate latitude 60°36' N., longitude 149°32' W. *1286*
The tract as described contains 40.90 acres.
8. A tract of land 9.00 chains in width, on the west right-of-way line, parallel to and 50 feet from the center line of the highway, and 153.07 chains in length, between Station 732 and Station 834+96, approximate latitude 60°38' N., longitude 149°33' W. *1286*
The tract as described contains 140.46 acres.
9. A tract of land 9.00 chains in width, on the west right-of-way line, parallel to and 50 feet from the center line of the highway, and 85.00 chains in length, between Station 924 and 980+10, approximate latitude 60°38' N., longitude 149°30' W. *1286*
The tract as described contains 78.50 acres.
10. A tract of land 10.00 chains in width, on the east right-of-way line, parallel to and 50 feet from the center line of the highway, and 18.00 chains in length, between Station 1021+12 and Station 1023, approximate latitude 60°40' N., longitude 149°28' W. *1286*

KENAI LAKE ADMINISTRATIVE SITE
Beginning at corner 1 M. C. U. S. Survey, 2467 on the shore of Kenai Lake, thence:
N. 88° 48' E., 12.23 chains to the west right-of-way line of Alaska Railroad (100' from center line thereof);
Southerly, 22.75 chains along said west right-of-way to the north bank of Ptarmigan Creek;
Westerly, 9.50 chains along north bank of Ptarmigan Creek to shore of Kenai Lake;
Northerly, 30.00 chains along shore line Kenai Lake to point of beginning.
The tract as described contains approximately 28.12 acres, within and adjacent to the Chugach National Forest.

ROADVIEW ADMINISTRATIVE SITE
Beginning at a point from which U. S. L. M. 2628 bears N. 87° W., 5.65 chains, thence:
S. 68° 00' E., 6.00 chains;
South, 2.29 chains;
S. 64° 30' W., 2.39 chains;
N. 47° 30' W., 5.87 chains;
N. 38° 00' E., 1.75 chains to point of beginning.
The tract as described contains 2.19 acres.
The following 10 recreation areas lie adjacent to the Seward-Anchorage Highway, and are described with relation to

CONT'D.

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The tract as described contains 12.00 acres.
The following 2 recreation areas lie adjacent to the Seward-Anchorage Highway, and are described with relation to the survey stations of the Bureau of Public Roads plan for proposed Sections A-2, B-2, maps of which are on file in the Bureau of Land Management:

- 1. A tract of land lying northeast of and adjacent to the right-of-way of the highway, which is 50 feet from and parallel to the center line thereof, between Station 60 and Station 70, and extending to the southwest shore of Upper Trail Lake, said tract being opposite Lots G and H, U. S. Survey No. 2323, approximate latitude 60°30' N., longitude 149°21' W. *Area 12.85*
- 2. A tract of land lying north and adjacent to the right-of-way of the highway, which is 50 feet from and parallel to the center line thereof, between Station 82 and Station 89, and extending to the southwest shore of Upper Trail Lake, said tract being approximately 18 chains westerly of U. S. Survey No. 2323, approximate latitude 60°30' N., longitude 149°21' W. *Area 12.85*

TOWNE NATIONAL FOREST

MENDENHALL LAKE SCENE AND WINTER SPORTS AREA

- Beginning at corner No. 2, U. S. Survey 1536, thence:
 - N. 18° 30' W., 100.00 chains;
 - N. 55° 00' E., 100.00 chains;
 - East, 110.00 chains;
 - S. 48° 00' E., 80.00 chains;
 - S. 20° 00' E., 100.40 chains;
 - S. 29° 41' W., 149.96 chains to corner 2, U. S. S. 2385;
 - N. 59° 53' W., 39.35 chains;
 - S. 0° 07' W., 6.98 chains;
 - West, 63.38 chains;
 - S. 38° 03' W., 3.25 chains;
 - S. 63° 06' W., 8.18 chains to corner 7, M. C. U. S. S. 2385, identical with corner 2 M. C. U. S. S. 2091, on west shore Mendenhall River; thence by meanders on said west shore.
 - N. 50° 00' E., 3.40 chains;
 - N. 22° 00' W., 2.30 chains;
 - N. 42° 18' W., 11.10 chains;
 - N. 19° 45' E., 14.90 chains;
 - N. 41° 48' E., 9.50 chains;
 - S. 72° 15' E., 16.60 chains;
 - N. 37° 30' E., 3.80 chains;
 - N. 12° 00' E., 2.10 chains;
 - N. 50° 48' W., 7.44 chains;
 - N. 62° 00' W., 2.50 chains to corner 8 M. C. U. S. S. 2385, identical with corner 8 M. C. U. S. S. 2091;
 - West, 21.87 chains;
 - North, 20.18 chains;
 - West, 12.20 chains;
 - North, 18.20 chains to corner 12, U. S. S. 2385;
 - N. 72° 41' W., 28.44 chains to point of beginning.

ANKA VILLAGS PUBLIC RECREATION AREA

- Beginning at corner No. 2, M. C. U. S. Survey 3050, thence:
 - Westerly, 110.00 chains, approximately, along mean high tide line of Anka Bay to corner No. 4, U. S. S. 3042;
 - N. 30° 42' E., 4.86 chains to corner No. 3, U. S. S. 3042;
 - North, 34.00 chains;
 - East, 45.38 chains;
 - South, 19.08 chains to corner No. 4, U. S. S. 3042;
 - S. 87° 51' W., 1.41 chains to point of beginning.

WARD CREEK WATER-SUPPLY SYSTEM

(For administration and disposition as authorized by sec. 2 of the act of August 2, 1947, 61 Stat. 321)

All national-forest land not heretofore withdrawn 400 feet in width adjacent to and on the north and west side of a proposed pipeline, beginning at the national-forest boundary from which corner No. 9 of U. S. Survey 1781 bears N. 34° 48' W., approximately 300 feet, thence:

- N. 10° 30' E., 1.100 feet;
- S. 84° 00' E., 1.200 feet;
- N. 54° 30' E., 1.200 feet;
- N. 15° 00' E., 1.500 feet;
- N. 24° 30' E., 1.250 feet;
- N. 27° 30' W., 500 feet;
- N. 33° 00' E., 1.100 feet;
- N. 9° 00' E., 1.050 feet;
- N. 34° 30' E., 1.000 feet.

and including all national-forest land adjacent to and on the south and east sides of above said proposed pipeline and situated between the said pipeline and one-fourth mile west of Ward Creek and Ward Lake, as shown on the map titled "Map of Lake Connell, Lake Ingram and Ward Creek, Showing Proposed Reservoirs, Dams and Pipe Line Ketchikan Pulp and Paper Company," by William D. Shannon and Associates, dated August 27, 1951, on file in the Bureau of Land Management, Washington, D. C.

The tract as described contains approximately 250 acres.

WARD CREEK PUBLIC CAMP GROUNDS

U. S. Survey 4054, lot AA. *1766*
The tract as described contains 19.5 acres.

WARD CREEK PUBLIC SERVICE SITE

T. 38 S., R. 64 E.,
Sec. 35, lots 5, 7, and 8;
Sec. 34, lot 6.
The areas described aggregate 122.51 acres.

WARD BAY PUBLIC BOATINGS AND RAFTING GROUNDS

T. 58 S., R. 78 E.,
Sec. 34, lots 1, 2, and 3.
The areas described aggregate 78.86 acres.

This order shall be subject to existing withdrawals for power-site purposes and Federal power projects so far as they affect any of the above-described lands; and it shall take precedence over, but not otherwise affect, the existing reservations of the lands for national-forest purposes.

Executive Order No. 8122 of July 5, 1939, reserving a portion of the above-described tract at Kenai Lake as an addition to an existing administrative site, is hereby revoked: *Provided*, That this revocation shall not be construed as affecting in any way the revocation made by section 1 of that order.

OSCAR L. CHAPMAN,
Secretary of the Interior.

MAY 16, 1962

[P. S. Doc. 34-4687] Filed, May 22, 1962

ture rather than the War Food Administrator, or vice versa.

"Sec. 5. Any provision of any Executive order or proclamation conflicting with this Executive order is superseded to the extent of such conflict. All prior directives, rules, regulations, orders, and similar instruments heretofore issued by any Federal agency relating to matters concerning which authority is vested in the War Food Administrator by this order shall continue in full force and effect unless and until modified or revoked by orders or directives issued by or under the direction of the War Food Administrator pursuant to authority vested in him."

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,

April 19, 1943.

EXECUTIVE ORDER 9335

PROVIDING ADDITIONAL MEMBERS OF THE WAR PRODUCTION BOARD

Pursuant to the authority vested in me by the Constitution and the statutes of the United States, as President of the United States and Commander-in-Chief of the Army and the Navy, it is hereby ordered as follows:

1. Paragraph 1 of Executive Order 9024 of January 16, 1942, as amended, is hereby amended to include the Chairman of the War Manpower Commission, the Director of the Office of Defense Transportation, and the Petroleum Administrator for War as members of the War Production Board.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,

April 19, 1943.

EXECUTIVE ORDER 9336

AUTHORIZING FINANCING ARRANGEMENTS TO FACILITATE THE PROSECUTION OF THE WAR

By virtue of the authority vested in me by the Constitution and statutes of the United States, and particularly by the First War Powers Act, 1941 (approved December 18, 1941), and as President of the United States, and in order to facilitate the prosecution of the war, it is ordered as follows:

1. The Office of Lend-Lease Administration and the War Shipping Admin-

istration are hereby authorized, without regard to the provisions of law relating to the making, performance, amendment or modification of contracts, to enter into guaranties, agreements of indemnification, agreements to provide funds, and other financing arrangements with the War Department, the Navy Department, and the Maritime Commission in connection with any loans, discounts, advances, contracts, guaranties, or commitments made pursuant to Executive Order No. 9112 of March 26, 1942, for the benefit or on behalf of the Office of Lend-Lease Administration or the War Shipping Administration, respectively, and to pay out funds in accordance with the terms of any such guaranty, agreement, or other financing arrangement so entered into.

2. The authority hereby conferred may be exercised by the Lend-Lease Administrator or the War Shipping Administrator or, in their discretion and by their direction respectively, through any other official or officials of the Office of Lend-Lease Administration or the War Shipping Administration. The Lend Lease Administrator and the War Shipping Administrator may confer upon any such official or officials, the power to make further delegations of such powers within their respective offices.

3. Complete data shall be maintained by the Office of Lend-Lease Administration and the War Shipping Administration as to all guaranties, agreements, and other financing arrangements which they respectively make pursuant to this Executive order. The Lend-Lease Administrator and the War Shipping Administrator shall make available for public inspection, as they may respectively deem compatible with the public interest, so much of such data as does not cover restricted, confidential, or secret transactions.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,

April 24, 1943.

EXECUTIVE ORDER 9337

AUTHORIZING THE SECRETARY OF THE IN- TERIOR TO WITHDRAW AND RESERVE LANDS OF THE PUBLIC DOMAIN AND OTHER LANDS OWNED OR CONTROLLED BY THE UNITED STATES

By virtue of the authority vested in me by the act of June 25, 1910, ch. 421,

36 Stat. 847, and as President of the United States, it is ordered as follows:

Section 1. The Secretary of the Interior is hereby authorized to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States to the same extent that such lands might be withdrawn or reserved by the President, and also, to the same extent, to modify or revoke withdrawals or reservations of such lands: *Provided*, That all orders of the Secretary of the Interior issued under the authority of this order shall have the prior approval of the Director of the Bureau of the Budget and the Attorney General, as now required with respect to proposed Executive orders by Executive Order No. 7298 of February 18, 1936, and shall be submitted to the Division of the Federal Register for filing and publication: *Provided, further*, That no such order which affects lands under the administrative jurisdiction of any executive department or agency of the Government, other than the Department of the Interior, shall be issued by the Secretary of the Interior without the prior concurrence of the head of the department or agency concerned.

Section 2. This order supersedes Executive Order No. 9146 of April 24, 1942, entitled "Authorizing the Secretary of the Interior to Withdraw and Reserve Public Lands".

FRANKLIN D ROOSEVELT
THE WHITE HOUSE,
April 24, 1943.

EXECUTIVE ORDER 9338

ABOLISHING THE OFFICE OF DEFENSE HEALTH AND WELFARE SERVICES AND TRANSFERRING ITS FUNCTIONS TO THE FEDERAL SECURITY AGENCY

By virtue of the authority vested in me by the Constitution and statutes of the United States, including Title I of the First War Powers Act, 1941, approved December 18, 1941 (Public Law 354, 77th Congress), and for the purpose of assuring adequate health and welfare services during the present emergency, it is hereby ordered as follows:

1. The Office of Defense Health and Welfare Services, established by Executive Order No. 8890 of September 3, 1941, in the Office for Emergency Management, is abolished.

2. The functions, duties, and powers of the Director of the Office of Defense Health and Welfare Services are transferred to the Federal Security Administrator.

3. The functions, duties, powers, personnel, property, records, and funds (including all unexpended balances of appropriations, allocations, and other available funds) of the Office of Defense Health and Welfare Services, and the Health and Medical Committee and the other advisory committees and subcommittees appointed pursuant to the said Executive Order No. 8890 and their respective functions, duties, powers, personnel, property, records, and funds, are transferred to the Federal Security Agency.

4. The functions, duties, and powers transferred by this order shall be administered under the direction and supervision of the Federal Security Administrator through an office to be established by him and to be known as the Office of Community War Services, or through such other offices, agencies, officers, and persons in the Federal Security Agency as he shall designate and in such manner as he shall direct.

5. Any provision of any prior Executive order in conflict with the provisions of this order is superseded to the extent of such conflict.

FRANKLIN D ROOSEVELT
THE WHITE HOUSE,
April 29, 1943.

EXECUTIVE ORDER 9339

TRANSFER OF CIVIL AIR PATROL FROM THE OFFICE OF CIVILIAN DEFENSE TO THE DEPARTMENT OF WAR

By virtue of the authority vested in me by the Constitution and statutes of the United States, particularly by Title I of the First War Powers Act, 1941 (approved December 18, 1941), as President of the United States, and in order to provide for the national security and defense, and to expedite the prosecution of the war, it is hereby ordered as follows:

1. The Civil Air Patrol, established in the Office of Civilian Defense, pursuant to Executive Order No. 8757 of May 20, 1941, as amended by Executive Order No. 9134 of April 15, 1942, and all of its functions, duties, and powers (including

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3. Necessity of administrative approval

A right-of-way for an irrigation project cannot be acquired over a national forest without the approval of the proper executive officers of the government. *U.S. v. Henrylyn Irr. Co.*, D.C.Colo.1912, 205 F. 970.

1. Purposes for right-of-way

Right to use public lands in forest reservations as sites for electric power works was not given by this section. *Utah Power & Light Co. v. U.S.*, Utah 1917, 37 S.Ct. 387, 243 U.S. 389, 61 L.Ed. 791.

Under this section a right-of-way may be granted through the national forests when the objective is to employ the right-of-way in a process of "milling and reduction of ores", and it is unobjectionable that the intermediate purpose is to generate and use electricity. 1915, 30 Op.Atty.Gen. 358.

This section does not invest the Secretary of the Interior with authority to grant rights-of-way for transmission lines through the national forests for the distribution of electrical power. 1914, 30 Op.Atty.Gen. 263.

2. Persons entitled to right-of-way

Under this section and sections 522, 523, and 551 of this title, corporation organized and existing under the laws of Canada, was not entitled to a water power permit within the Okanogan National Forest in the State of Washington. 1916, 30 Op.Atty.Gen. 581.

4. Condemnation

The suggestion that the city of Walla Walla might be impeded because it in no event can exercise the right of eminent domain within the limits of the Wenaha National Forest Reserve seems to be answered by the fact that the city has already acquired all necessary rights within the limits of that reservation, and, if not, it seems plain that it will be enabled to do so under this section, which makes express provision for the acquiring of such rights by the city. *Langdon v. Walla Walla*, 1920, 193 P. 1, 112 Wash. 446.

5. Injunction

The United States may maintain a suit to enjoin the unauthorized construction of irrigation canals and tunnels within a national forest, and right to such an injunction is not affected by the fact that the Secretary of the Interior may have improperly delayed or refused to act on an application made for right of way through the reservation for such canals and tunnels. *U.S. v. Henrylyn Irr. Co.*, D.C.Colo.1912, 205 F. 970.

§ 525. Rights-of-way for wagon roads or railroads

In the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right of way for a wagon road, railroad, or other highway over and across any national forest when in his judgment the public interests will not be injuriously affected thereby.

(Mar. 3, 1899, c. 427, § 1, 30 Stat. 1233.)

Repeal of Section

Section repealed by Pub.L. 94-579, Title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System.

Historical Note

Codification. As originally enacted, this section contained following the word "forest" the words "or reservoir site." See sections 665 and 958 of Title 43, Public Lands, which represent the phase of this section here omitted.

Code of Federal Regulations

Administration of forest development transportation system, see 36 CFR 212.1 et seq.

Library References

Woods and Forests ⇐8.
C.J.S. Woods and Forests §§ 11, 12.

§ 533. Grant of easements for road rights-of-way; authority of Secretary of Agriculture; regulations

The Secretary is authorized, under such regulations as he may prescribe, subject to the provisions of sections 532 to 538 of this title, to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way (1) over national forest lands and other lands administered by the Forest Service, and (2) over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it.

(Pub.L. 88-657, § 2, Oct. 13, 1964, 78 Stat. 1089.)

Historical Note

Transfer of Functions. Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with the provisions of sections 532 to 538 of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska

Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System. see Reorg. Plan No. 1 of 1979, §§ 102(f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376. eff. July 1, 1979, set out in Appendix 1 to Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Pub.L. 88-657, see 1964 U.S. Code Cong. and Adm. News, p. 3994.

Cross References

Declaration of federal policy of National Forest Transportation System on economically and environmentally sound basis, see section 1608 of this title.
Right-of-way provisions as preempted by sections 532 to 538 of this title if inconsistency arises. see section 1770 of Title 43, Public Lands.

Code of Federal Regulations

Nondiscrimination in federally-assisted programs of Department of Agriculture, see 7 CFR 15.1 et seq.

Library References

Woods and Forests ⇐8.
C.J.S. Woods and Forests §§ 11, 12.

§ 534. Termination and cancellation of easements; notice; hearing

An easement granted under sections 532 to 538 of this title may be terminated by consent of the owner of the easement, by condemnation, or