

Subject: PLO Easement/Fee

Date: Thu, 20 Dec 2001 13:01:20 -0900

From: "John F. Bennett" <johnf_bennett@dot.state.ak.us>

To: James E Cantor <jim_cantor@law.state.ak.us>

CC: James H Sharp <jim_sharp@dot.state.ak.us>

Jim, I looked at my documents leading up to PLO 601 and shortly thereafter to see what the discussion was about the withdrawal/easement issue. I have attached 5 pdf document named by the date of the memo/letter.

4.11.49.pdf The concern about this problem was evident before PLO 601 came into effect. This memo discusses the need for a segregation survey to locate the highway withdrawals and in the alternative a lifting of the withdrawals as soon as possible to avoid the segregation surveys.

8/10/49 PLO 601 - highway corridors - "withdrawn from all forms of appropriation under the public land laws"

9.9.49.pdf Noting that easements would present far fewer problems to the disposal of land. Notes the conflict between highway withdrawals and homestead entries.

11.28.49.pdf States that an on the ground examination of all entries is required and so any conflicts with withdrawn highway rights of way should be apparent.

12.5.49.pdf Notes conflict of easements vs. withdrawals. States that regulations governing withdrawals should be broadened to permit the passage of a road through land upon which entry has been made without invalidating the entry.

12.12.49.pdf Hoping that withdrawals will not be used for highways indefinitely.

10/16/51 PLO 757 & SO 2665 - local and feeder road withdrawals replaced by easements

4/11/58 PLO 1613 - through roads - revokes withdrawals and establishes easements.

If I understand your scenario - the entryman filed on the land at the time the road was subject to the withdrawal status. The way I understand the public land laws, the highway corridor was not available for entry while it was in withdrawal status. But once it was converted to easement status the applicant (or maybe BLM unilaterally) could amend the entry to include the highway easement area. So when patent was issued, the homesteader would own the underlying fee estate subject to the highway easement.

I guess there is the possibility that BLM made a mistake. Either they (or the applicant) did not amend the entry to include the withdrawal/easement in the patent, or worse yet, they issued the patent including the withdrawal while it was still in withdrawal status. (I don't remember if you mentioned the patent date) Given the memos it would not be surprised if some of this happened in error, or if it happened on purpose with the rationale that this screwy situation created by PLO 601 was going to be remedied soon. If it wasn't for the fact that the federal quiet title limitation would likely prevent a contest of the patent at this late date, the only question might be whether the underlying fee estate was owned by the homesteader or still by BLM. But at this point, if BLM issued the patent without an


exclusion for the withdrawal, they either did not know that the road conflicted with the entry or they only considered it subject to an easement interest.


Jim, you will be the best judge of the following statute, but I believe the intent was to recognize the potential conflicts that could and have arisen as a result of the PLO easement issue. From what I have been able to gather from the facts you relayed to me, I don't believe we would do well claiming that the property owner did not own the underlying fee estate subject to the highway easement.


Sec. 09.45.015. Land adjoining highway reservation.


(a) A conveyance of land after April 7, 1958, that, at the time the conveyance was made, adjoined a highway reservation listed in section 1 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958), is presumed to have conveyed land up to the center-line of the highway subject to any highway reservation created by Public Land Order 601 and any highway easement created by Public Land Order 1613.


(b) The burden of proof in litigation involving land adjoining a highway reservation created by Public Land Order 601 or a highway easement created by Public Land Order 1613 is on the person who claims that the conveyance did not convey an interest in land up to the center-line of the highway.

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 4.11.49.pdf	<p>Name: 4.11.49.pdf Type: Acrobat (application/pdf) Encoding: base64 Download Status: Not downloaded with message</p>
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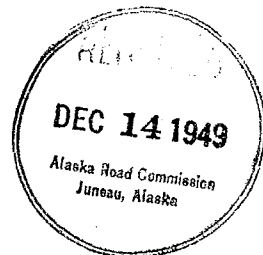
 12.12.49.pdf	<p>Name: 12.12.49.pdf Type: Acrobat (application/pdf) Encoding: base64 Download Status: Not downloaded with message</p>
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John F. Bennett <johnf_bennett@dot.state.ak.us>
Chief, Right of Way
Northern Region
Department of Transportation



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

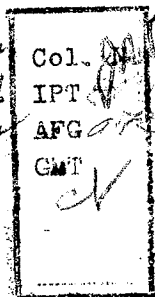
December 12, 1949



Colonel John R. Noyes
Commissioner of Roads
Alaska Road Commission
Juneau, Alaska

Dear Mr. Noyes:

Attached is a copy of a memorandum, the last paragraph of which, I believe, is of interest to you. I am not familiar with the contents of the telegram and letter to which reference is made in the first part of Secretary Chapman's correspondence, but apparently they are concerned with mineral rights within highway rights-of-way. However, as stated above, it is the final paragraph of the letter which drew my attention. I am not entirely certain as to its meaning, but it does appear to give some hope that withdrawals as such may be not used for highway purposes, indefinitely.



Very truly yours,

Lowell M. Puckett
Lowell M. Puckett
Regional Administrator

Encl.

LMP/fp

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UNITED STATES
DEPARTMENT OF THE INTERIOR
ALASKA ROAD COMMISSION
JUNEAU, ALASKA

Mr. Lowell M. Puckett
Regional Administrator
Bureau of Land Management
Department of the Interior
Anchorage, Alaska

December 5, 1949

Dear Mr. Puckett:

This is in reply to your letters to this office of September 7, September 19, and October 5, 1949, and we also refer incidentally to your letter of September 9, 1949, to Mr. Kenneth J. Kadow, Director, Alaska Field Staff, a copy of which was furnished to our office. The matters referred to in your letters have been under close study for the past several weeks, and it is realized that you are governed by regulations which we must endeavor to meet. It must be recognized that these regulations impose a considerable burden upon the Alaska Road Commission and will serve to increase the cost of our work. In the interest of economy and efficiency of road construction, it is desirable to simplify as far as possible the procedures required.

On November 29th, 1949, a conference was held between you and our engineering personnel in Juneau at which time some of the matters covered in your letters were discussed in the light of our studies. The present letter is an effort to cover our conclusions at this conference.

Rights-of-way; Withdrawals or Easements

There is enclosed herewith a copy of a letter we have written to Mr. James P. Davis, Director, Division of Territories & Island Possessions, calling attention to apparent inconsistency between Public Land Order No. 601 and the act of July 24, 1947 (Pub. Law 229, 80th Cong., 1st Session, 48 U.S.C., 1946 Ed., Supp. 1, 321D). Public Law 229 was passed at the request of the Department of the Interior in order to simplify the acquisition of rights-of-way through lands upon which entry had been made. It is our contention that this Law was intended to avoid the difficulty of determining for each entry or patent the exact location of the road. Public Land Order No. 601, on the other hand, calls for withdrawals, and unless present regulations governing withdrawals can be broadened to permit the passage of a road through land upon which entry has been made without invalidating the entry, the purpose of Public Law 229 is defeated. We will support strongly any action you may take to correct this situation.

Maps of Road Locations

The Alaska Road Commission does not have the necessary engineering and drafting staff available at the present time to reduce our maps of

new road locations in all cases to a scale of 1,000 to 2,000 feet to the inch. On the other hand, maps on the scale of 400 feet to the inch are standard for construction purposes and can readily be furnished. At the conference it was suggested that you consider accepting maps on the scale of 400 feet to the inch and let us know the minimum number of sets you will require. If you will inform us further about this, we will endeavor to comply and we will also advise your office in each case of the width of right-of-way applicable to each particular road in question. Maps of existing roads not hitherto mapped will be provided as rapidly as they can be surveyed, and we will use the 1,000 feet to the inch scale for such maps. A party will start on this in the spring, and our District Engineer in Anchorage is being directed to contact you regarding the most urgent locations.

Use of Gravel

The Alaska Road Commission is in entire agreement with your office that gravel permits are sufficient for construction purposes and that gravel withdrawals should only be sought where a particular pit is desired for permanent maintenance purposes. We will endeavor to see that our applications for gravel permits and withdrawals are kept current. A special case arises where the gravel must be obtained from the beds of navigable streams. Your letter of October 5, 1949, indicates the legal difficulties involved in this case. A copy of our letter of December 1, 1949, to Mr. James P. Davis, Director, Division of Territories & Island Possessions, Department of the Interior, is enclosed, wherein we request Federal legislation intended to permit the use of gravel from navigable streams in Alaska for road purposes. It should be noted that in certain places the beds of navigable streams are our only practicable source of such gravel.

Arrangement and Screening of Gravel Pits

It is realized that much can be done to improve our practices in this regard. An effort will be made to conform to the desires of your office and our District Engineers will be informed of the action by them necessary for this purpose. We agree with your remarks about the limitation of size of gravel pits. Matters of arrangement with reference to the road must be considered in the light of economy, as well as beauty; however, we will do what we can in this regard.

Timber

It appears that most of the area in which roads are built by the Alaska Road Commission are not covered with timber which actually has a merchantable value. Therefore, it was suggested at the conference that the Bureau of Land Management restrict its attention to timber that is of a size too heavy to be handled with a bulldozer. If the principle could be established that timber which is small enough to be cleared by a bulldozer is not considered "merchantable," then the problem would be greatly simplified, both for your office and for ours. It is requested, therefore, that you consider the adoption of this policy and advise us accord-

ingly. We will then undertake to follow carefully your regulations for the disposal and use of merchantable timber and hope you will leave us a free hand in the disposal of the smaller timber, not coming within merchantable classification. Here again, considerations of appearance conflict in some cases with considerations of economy. We are fully cognizant with both requirements and will endeavor to improve our practices, insofar as this can be accomplished without greatly increasing costs.

Fire Hazards

With regard to fire hazards it has been our experience in the past that burning of cut timber was sometimes the cause of forest fires. For this reason, and for reasons of economy, it is not considered desirable in all cases to burn the timber cleared from land necessary for road construction. In this case also, we will endeavor to improve our practices so as to avoid objectionable appearance.

I hope that the policies enunciated in this letter will go far toward removing causes of complaint which your Bureau has had in the past against the Alaska Road Commission. I desire, however, to emphasize the fact that even the minimum compliance with the regulations as set forth in your letters will very measurably increase our road construction costs and thereby decrease the amount of road that can be constructed with the funds available to us. Also, it may be necessary to assign an employee or employees to the full time duty of interpreting and complying with your regulations and of making the necessary follow up to insure that our District offices also conform to these requirements. The total cost of this cannot be accurately estimated at this time.

Sincerely yours,

John R. Noyes
Commissioner of
Roads for Alaska

Enclosures (2)



UNITED STATES
DEPARTMENT OF THE INTERIOR
~~BUREAU OF LAND MANAGEMENT~~
OFFICE OF THE SECRETARY
WASHINGTON

NOV 28 1949

My dear Mr. Anderson:

Reference is made to your telegram and letter of November 2 relating to the withdrawal made by Public Land Order No. 601, dated August 10, 1949, of lands within a certain distance of the highways and roads in Alaska. You urge postponement of the withdrawal, and modifications to permit mining locations.

While any withdrawal of public lands is not accomplished without more or less inconvenience to the public in one way or another, it is not believed that the uncertainties you mention will cause the confusion anticipated. The mining, homestead, and other public land laws do not contemplate that selections or locations will be made at the district land offices without examination of the property, and if examination is made on the ground, it should be possible to determine with a fair degree of accuracy the distance of the prospective claim from the center line of a nearby highway or road. Also, since mining claims occupy surface areas, it does not appear that these should be excepted from the effect of the withdrawal. While we have no doubt concerning the legality of the withdrawal in its present form, we have serious doubts that, if mining claims or other entries were allowed, the courts would sustain the imposition of restrictions in the manner suggested in your letter.

Careful consideration will be given to any applications for permits for rights-of-way for ditches which may be filed under the provisions of the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. sec. 959), affecting lands covered by the withdrawal.

The Alaska Road Commission is already at work on the matter of survey and preparation of plats showing the location of the highways with respect to the public land surveys, and as the plats are filed, it is proposed to revoke the withdrawal order from time to time as to the lands in the highway surveys.

Sincerely yours,

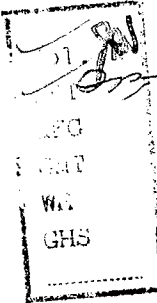
/s/ Oscar L. Chapman

Under Secretary

Mr. A. L. Anderson
Secretary, Alaska Miners' Association
Fairbanks, Alaska



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska



September 9, 1949

Mr. Kenneth J. Kadow
Director, Alaska Field Staff
Juneau, Alaska

Dear Ken:

Since your inquiry as to whether or not the Bureau of Land Management has administrative problems to discuss at the Field Committee meeting, the public land order withdrawing areas parallel to roads in Alaska has been promulgated. The problems which this has brought about probably should be considered as administrative, and although we have taken considerable time discussing rights-of-way at other committee meetings, this is of such deep concern to me that I present it for your decision as to whether or not the matter should be discussed.

There have been several discussions as to the designation of road rights-of-way as easements or withdrawals. You will probably recall that I have indicated our feeling in the Anchorage office that easements would present far fewer problems to the disposal of the land.

Let us assume that the road goes through the SW $\frac{1}{4}$ of a section at an angle, and does not follow along any of the borders of the quarter section. Through the promulgation of the withdrawal order, there is now a withdrawn strip along the road. As homesteaders are not permitted to file on non-contiguous tracts, the homesteader will not be able to obtain the full 160 acres in that quarter section. At the present time few of the roads are actually shown on the plats of the Bureau of Land Management, as many of the roads have been built since the areas covered by the plats were surveyed. The Bureau of Land Management District Land Office, therefore, cannot locate the road on their maps. At the present time it is necessary that we follow the procedure of allowing the homestead entry as to the full 160 acres, but we are obliged to advise the entryman that when the road is located and with it, the withdrawal, it probably will be necessary to cancel a portion of his entry. Therefore, he should place all of his improvements and all of his cultivation on one side of the road. You can well see the handicap and the confusion that is to result.

*Easement
much
better*

Then, too, the matter of the description of the tract lying on one side of the road arises. It will be necessary for the Bureau of Land Management Engineering Department to survey all areas traversed by roads so as to give a definite indication by lots as to the lands that must be described in the patent. In other words, where the roads have already gone through surveyed lands, we will have no description of the land to definitely put in a

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patent, unless we resurvey all of the areas in order to describe the lands adjoining the highways by lots.

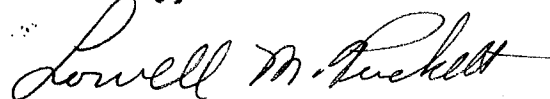
On the other hand, if the roads were considered as easements, the homestead entry would go across the road, and if at any time the road were changed or abandoned, the homesteader would automatically have title to that area formerly included in the right-of-way. If the designation of the rights-of-way continues as withdrawal, each time the road is changed it will be necessary to open the strip of land formerly occupied by the right-of-way, to preference right filing by veterans.

Of course any plans regarding rights-of-way must necessarily be considered by the Alaska Road Commission. However, representatives of our Washington office have indicated that as rapidly as the Alaska Road Commission files maps showing the location of the roads and the rights-of-way, with the district land offices involved, action will be initiated to revoke the withdrawals, and to leave the rights-of-way as easements across the land.

It does appear that proper procedure will require in either case the filing of plats or maps with the district land offices by the Alaska Road Commission, showing the location of the roads, and the widths of the rights-of-way along each road. We have indicated to the A.R.C. our reasons for believing that this procedure is necessary. The whole project has not yet been worked out between us, but is in a process of being developed.

Perhaps you will consider that this is a matter which should be worked out entirely by the Bureau of Land Management and the Alaska Road Commission. However, I would like to have an expression of the Field Committee's opinion relative to the matter of easements vs. withdrawal, if you see fit to present the matter.

Sincerely,



Lowell M. Fuckett
Regional Administrator

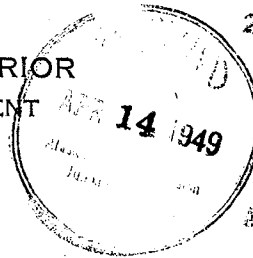
cc: Col. John Noyes, ARC ✓

LMP/fp



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

22506 "L:REC"



April 11, 1949

MEMORANDUM

To: Director, Bureau of Land Management, Washington, D. C.
From: Lowell M. Puckett, Regional Administrator
Subject: Establishment of rights-of-way for public roads and highways in Alaska

Col. 15
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WHD

Reference is made to your memorandum of February 23, 1949, to the Director, Division of Territories, a copy of which was sent to this office, concerning the proposed withdrawal by public land order of rights-of-way for certain classes of roads or highways.

In the memorandum you expressed concern about obtaining approval of the order by the Department of Justice, unless a list by classes of the several roads is incorporated in the order. From this, it is presumed that the roads in question to be listed, have been actually constructed or have been surveyed on the ground for construction in the near future. In such case, it appears to me that the purpose of the proposed withdrawal may well be accomplished by filing of maps showing the location of the roads and width of the rights-of-way therefor, for notation on the land office records in accordance with Departmental instructions of January 13, 1916 (44 L.D. 513), and an exception clause inserted in any final certificate and patent which may subsequently be issued for the land on which the road is located. This would do away with the necessity for the survey of the right-of-way strip, in the event the public land surveys are extended over the areas crossed by the roads or highways. Moreover, if the right-of-way is established by a withdrawal over surveyed lands, entry of the legal subdivision affected by the withdrawal may not be made unless and until a segregation survey is made of the road right-of-way.

The filing of maps as suggested would definitely place on record the width of the right-of-way shown thereon, which, it is believed, would also be protected by R.S. 2477 (43 U.S.C. sec. 932) in the event of the subsequent disposal of the land. This general right-of-way statute is considered applicable to Alaska as well as other Federal rights-of-way laws. See statement in opinion of the Attorney General (30 Op. Atty. Gen. 387) as to the general applicability of right-of-way laws in the territory of Alaska. While the statute does not require the filing of maps or specify the width of rights-of-way that may be established thereunder, it is believed that the recordation of such right-of-way maps, taken together with notation under 44 L.D. 513, supra, would effect to definitely establish the width of the right-of-way strip appropriated. In this connection I wish to also

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call attention to the act of June 30, 1932 (47 Stat. 446, 48 U.S.C. sec. 323), which is administered by the Alaska Road Commission, and which contemplates that maps and plans shall be made showing the location of roads constructed or to be constructed thereunder.

This matter was not presented for discussion or consideration at either of the conferences held at Juneau by the representatives of the Alaska Field Staff, as it appeared that the plans for establishing rights-of-way withdrawals were well formulated and far advanced. Our discussions were more or less centered on the proposition of reaching an accord on the width of certain classes of roads rather than the method by which they were to be established. The Regional Counsel and I had the opportunity recently of discussing with Colonel Moyes and certain members of his staff the matter of establishing road rights-of-way by the filing of maps in lieu of withdrawals, as herein above indicated, and they appeared to be favorably impressed with the suggestion from a practical standpoint. I am, therefore, sending a copy of this memorandum to Colonel Moyes for his information.


If, however, it is deemed desirable that the withdrawals as contemplated be made, it is recommended that they be followed as soon as possible, with the filing of maps of definite locations, as herein above suggested, and the withdrawals thereafter lifted, so as to avoid the necessity of making segregation plats of surveys of the rights-of-way in order to permit entry and disposal of the lands adjoining.

In view of the present situation in regard to rights-of-way for existing roads, some of which are covered by withdrawals and others are not, we are meeting with some confusion and difficult problems in connection with our small tract program, which will continue until some definite policy or program is adopted for the establishment of the rights-of-way. For instance, where we have under consideration an area for small tract classification involving surveyed lands, traversed by an existing road for which no maps have been filed nor covered by a withdrawal, the question arises as to how the small tracts should be laid out with relation to such roads. We have in such cases two alternatives, (1) lay out the small tracts in the most desirable pattern without regard to the road, since the rights of the public in and to the road are fully protected by R. S. 2477, supra, or (2) in anticipation of a future withdrawal for the rights-of-way, to lay out the tracts so that they will not come within 50-100 or 150 feet from the center line of the road as constructed on the ground, dependent upon the class of road and the width to be prescribed therefor. Under alternative (1), no supplemental plat or segregation survey would be necessary, as the lessee or purchaser of the tract would take the same subject to the right-of-way. If alternative (2) is adopted, which would appear in order for the purposes of leasing, it will

be necessary to make supplemental or segregation plats of survey to give proper designation to the tracts, before sale and patent could be permitted. It is the Regional Counsel's opinion that in case of existing roads where no previous withdrawal has been made or contemplated, if any, that alternative (1) be adopted, and in case of such existing roads for which withdrawal has been made or will be made, that alternative (2) be followed, pending the announcement by the Department of a definite policy for the establishment of roads and highways in Alaska. This procedure in connection with our small tract program will be followed unless and until otherwise advised by the Washington office.


Lowell M. Tuckett

Approved:


Abe Barber
Abe Barber
Regional Counsel

LMF/AB/fp

cc: Mr. Kadow ✓
Mr. Moyes ✓