

John Bennett

From: John Bennett
Sent: Sunday, February 14, 2021 12:56 PM
To: 'Sprout, Timothy L (DOT)'
Subject: RE: Federal mining claims vs Mineral Surveys

Tim – I'm not sure I have a good answer for that. I'm also surprised that the plans call out a prescriptive ditch to ditch easement but does not define the footprint that is being claimed. If I look at it from a negotiations perspective, often if a parcel in part asserts prescription but we still need to acquire additional ROW, we will always end up paying for the prescriptive area as if it never existed. The value of the prescriptive area is clearly not worth the cost of condemnation so it becomes a part of the negotiated administrative settlement. If that is what happened we would still typically show the prescriptive footprint but that does not seem to be the standard here. I'm also a bit surprised that we didn't acquire from Mudminers assuming they still have a valid right to mine through the road within the federal claims. I'm surprised that there isn't more discussion in the Mudminers and Doyon acquisition files. JohnB

From: Sprout, Timothy L (DOT) [mailto:tim.sprout@alaska.gov]
Sent: Saturday, February 13, 2021 9:20 AM
To: John Bennett <JBennett@rmconsult.com>
Subject: RE: Federal mining claims vs Mineral Surveys

John –

Do you recall why we chose to assert prescriptive where the Mudminers claim is on DNR land and therefore not acquire interest from Mudminers, but chose to acquire parcels from Mudminers where their claim is on Doyon land?

Tim Sprout, PLS, SR/WA
ROW Engineering Supervisor
DOT&PF Northern Region
907-451-5465
tim.sprout@alaska.gov

From: Sprout, Timothy L (DOT)
Sent: Friday, February 12, 2021 4:46 PM
To: John Bennett <JBennett@rmconsult.com>
Subject: RE: Federal mining claims vs Mineral Surveys

John –

Thank you for all the words you typed.

This definitely helps. 😊

Tim Sprout, PLS, SR/WA
ROW Engineering Supervisor
DOT&PF Northern Region
907-451-5465
tim.sprout@alaska.gov

From: John Bennett <JBennett@rmconsult.com>
Sent: Friday, February 12, 2021 2:02 PM
To: Sprout, Timothy L (DOT) <tim.sprout@alaska.gov>
Subject: RE: Federal mining claims vs Mineral Surveys

Tim – this will be short as I seem to have given myself a case of carpal tunnel or some such thing that is making typing a bit of a task. I’ve attached a couple of things that may be related. Here’s my from the hip answers: You title this email “Federal Mining Claims vs Mineral Surveys” although I’m not sure that is really one of your questions. A mineral survey is only required if the federal mining claimant proposes to take the claim to patent. You will find many approved mineral surveys for claims that for a variety of reasons never went to patent and so really have little meaning other than to provide some historical insight. Also, as the feds have had a moratorium on taking claims to patent for the last couple of decades new mineral surveys are pretty much no longer a thing. However, a person can still file and hold a federal mining claim on federal lands where the land is open for staking and the miner files and maintains all of the appropriate location notices and affidavits of labor. I’m going to move down to your text and respond in red. It likely won’t be a complete answer but hopefully it will help a little. JohnB:

From: Sprout, Timothy L (DOT) [<mailto:tim.sprout@alaska.gov>]
Sent: Friday, February 12, 2021 9:32 AM
To: John Bennett <JBennett@rmconsult.com>
Subject: Federal mining claims vs Mineral Surveys

Hi John –

We are preparing a DNR plat to close out the Road to Tanana Tofty to Yukon River project and conveyance documents for the Mudminers LLC parcels 2A, 2B, and 3 cannot be found.

On DNR land we show prescriptive easement through the Mudminers claim (SHT 35 plat 2017-2). We show parcel 2A, 2B, and 3 geometry crossing the Mudminers claims on Doyon land running north of the of old Tofty Road (SHT 4 plat 2014-2). The Mudminers claims appear to have prior entry, though the Doyon patents do not exclude them.

What rights does the Mudminers LLC quit claim deed convey? What is the difference between a federal mining claim and a mineral survey? I assume acquisition of parcels 2A, 2B, and 3 would involve Doyon? Do you have a recommendation on how to clear title for parcels 2A, 2B, and 3?

The only reason I can see why there is no documentation on the Mudminer’s parcels is that it was being deferred until the portion of the claim that would end up residing on DNR lands was resolved. And by being resolved I mean that there was discussion of the federal claims that would now be on state land would have the federal mining claims converted to state mining claims. In that status, the claimant would still have mining rights but the state’s management would also allow for various multiple use options, such as issuing a transportation ROW. The mudminers claims that were over lands now patented to Doyon are still valid if they preceded the ANCSA selection. I believe they had a certain number of years to go to patent (but that is off the table now) but as long as they meet the filing requirements, I believe they continue to hold a mining interest which is conveyable by QCD. I have not looked at this type of situation closely but I believe that Doyon has little management authority over the continuing federal mining claims. I agree that resolution would require acquisition from both Doyon and Mudminers. If you only dealt with Doyon you would have a land interest subject to the mineral interest and if you only dealt with Mudminers you would have the mineral interest but no separate land interest that would be required to grant a road ROW.

Assuming a valid federal mineral location prior to PLO 601, the 100’ wide Tofty ROW would be subject to the mineral claim leaving only the possibility of a prescriptive width claim for ROW unless the federal claim is relinquished or they failed to meet their filing requirements. If that were to happen, the PLO ROW would then rise to the surface so to speak as the full 100’ width. So there is still a possibility that even with Doyon ownership, the ROW width could go to the full

PLO width. So any review of the mudminer's chain of title should include the original location notice and an unbroken chain of affidavits of labor that allowed the claims to remain valid.

The scenario is a bit different on the state lands. The prescriptive easement width would hold until the federal claims are relinquished in favor of the state claims. At that point I believe the PLO ROW width would be unencumbered by the prior existing federal claim and move up to its full width.

A second question.

AJ Wait at DNR has inquired about the status of FAS 6802 Livengood to Brooks Army Creek Road, which ends at the Mike Hess Creek Dam. The Omnibus shows 8 miles constructed.

Our State Atlas Map 49 GIS system (replaced the old RIP system) shows that the first 4 miles are managed and maintained by a City or Municipality, and the last 4 miles shows nothing.

MTP plats call this the Livengood-Heine Road. DNR Alaska Mapper calls this the Livengood Road.

This road crosses several Mineral Surveys. The one TA I looked at in this area appear to exclude some of these mineral surveys.

Can DOT&PF automatically assume management authority for Omnibus Road constructed mileage? Where Omnibus constructed mileage crosses mineral surveys (or US Surveys, for that matter) having prior entry can we assert a prescriptive easement?

The problem is that the original Omnibus Deed text was also based on a planning type of State Highway System document. That is, there may have been many other historic roads that by ARC construction or maintenance met the PLO requirements but they were left off the QCD because Planning no longer considered them to be important. On the opposite side of the coin, the Planning document that formed the basis for the QCD also listed roads that were in the Planning or Design stages at statehood. That is, they really didn't exist but they show up as a line item. That is why you have the constructed vs. unconstructed mileage. While the PLOs provided for posting of certain unconstructed roads to secure a PLO ROW, most required construction to provide the "notice" that the ARC was asserting its PLO rights. So I would not use the GIS as a basis for constructed mileage or whether the State has a public PLO ROW. Use other maps or aerial photos to determine the constructed length. The "managed and maintained" is also just a Planning descriptor and means nothing regarding the status of the PLO ROW. "Management and Maintenance" are swapped like baseball cards to meet certain funding obligations.

We generally can assert a prescriptive easement over a patented US or MS where the location or entry date precludes assertion of PLO ROW. Also, if the PLO now crosses what is DNR managed lands, and the old federal mining claims have been converted to state mining claims or entirely relinquished we should be claiming the full PLO width.

I understand that simple questions do not have simple answers. I appreciate any thoughts you have.

Thank you.

Tim Sprout, PLS, SR/WA
ROW Engineering Supervisor
DOT&PF Northern Region
907-451-5465
tim.sprout@alaska.gov

