

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities

TO: E. John Athens, Jr.
Assistant Attorney General
Northern Region

DATE: May 28, 1999

FILE NO:

TELEPHONE NO: 451-5426

FROM: John F. Bennett
Acting Chief, Right of Way
Northern Region

SUBJECT: Steese Highway MP 101
Project S-0670(8) Pcl. 15
Federal mining claim conflict

Back in April of this year, we were contacted by BLM regarding a mining plan they were reviewing. The mining plan impacts the Steese highway in the vicinity of milepost 101 near the southerly base of Eagle Summit. The miner, Steven L. Olson, claims that the road is subject to his prior existing federal mining claim and that he will seek reimbursement for the costs of removing the road (overburden) such that he can mine his claim.

According to the mining claim location notice, the conflicting claim, Bench Claim #2 Below Discovery (F63473) was located on July 8, 1969. Between 1971 and 1972, a part of the Old Steese highway was realigned across federal lands. The right of way was acquired under a federal Title 23 grant on June 11, 1971 (F13244). There is no indication in our files that this grant conflicted with an existing mining claim. As is the case with federal highway grants, our grant is subject to prior existing rights.

Ron Reitano (M&O), Shari Howard and Pat Thayer visited the site earlier this week and talked to Olson. Olson stated that once he receives his permits in about 2 weeks, he plans to start mining through the Steese highway. He said that given his knowledge of the ground's gold values, he would relinquish his rights to mine through the road for \$900,000. He said he had also been advised by his attorney to have two contractors provide estimates of the cost to remove the highway such that the State could be billed for the overburden removal that otherwise would have been unnecessary.

The portion of the Steese highway in conflict with Olson's claim was constructed between 1971-72 as a part of the Ptarmigan Creek Bridge project. The project realigned the Steese to eliminate a switchback curve. M&O has considered the option of improving the original alignment and reverting back to it but decided that the time and cost factors were excessive. As the Ptarmigan Creek bridge on the old alignment has been removed, this option would also require the construction of a new bridge.

We had discussed how this conflict might have come to exist without our knowledge. Mining claim location notices are notoriously ambiguous and the one filed for F63473 did not provide sufficient detail to easily identify a conflict in the 1969-1971 timeframe. If the claim lines were well marked as required, why did our crew not notice them during the Locations survey? There are few trees in this area, so a brush line would not be apparent. Corner posts were often cut from native material and would probably not be obvious at long range. These issues were raised in an effort to determine whether the claim could be considered invalid against our grant if the posting and line marking requirements had not been met. I don't believe we can dredge up sufficient evidence to determine whether the claim corners and lines would have been apparent between 1969 and 1971. The corners are currently well marked and BLM has accepted them as meeting their requirements for a valid claim. You might notice that the claim boundaries are not shown on any of the attached right of way maps. Assuming we need to proceed with acquisition, it will be necessary to have the claim surveyed in relation to our existing right of way to

accurately portray the area to be acquired. There is no sufficiently accurate mapping that will allow us to quantify the conflict at this time.

At this point, we need to know what our legal options are. If Olsen does in fact have a right to mine through the road, we need to explore what will be necessary to prevent this from occurring while we proceed with the acquisition of his interest.

Tony Johansen has noted that similar events have occurred in the past in the Jack Wade mining area (Taylor Highway) and on the Tofty road. Although I don't know the facts of those cases, apparently DOT was able to require that the miner provide a detour and replace the road to our standards once the mining was completed. Therefore, Tony has requested that I ask whether the State has any authority to require Olson to do the same in this situation.

I have attached relevant memos, letters, plans and photos that may aid you in this evaluation. A current title report is also included.

As we discussed this morning, if it is determined that Olson has the senior interest and the State has no authority to require a detour and road replacement, then we will have to notify him that an inverse condemnation taking has occurred and that he must cease any mining operation that will damage the road. At that point we will have to proceed through the normal process of appraisal and acquisition of the necessary right of way. If he does not cease his mining activity, it may be necessary to obtain a court order to ensure the road is not damaged.

Cc: Ralph Swarthout, PE, Director, M&O
Ron Reitano, PE, Fairbanks Area Manager, M&O