

Bennett, John F (DOT)

From: Bennett, John F (DOT)
Sent: Monday, July 16, 2007 3:21 PM
To: 'Gabrielson, Eric'
Subject: RE: Section Line Easement issue - Harding lake

Eric, I think you called it right when you said the lot was subject to a section line easement, but I believe it is only a federal (33' each side) as opposed to a state (50' each side) SLE. The section line in question is the line between Sections 5 and 6, T6S, R5E, FM. The three elements to establish an SLE are:

- 1) Was the section line surveyed and approved? [Yes...the rectangular survey plat for this line was approved on July 12, 1938.]
- 2) Was the land vacant, unreserved federal lands? [Yes...our presumption is that prior to the January 3, 1956 filing of the application by Eb Rice (who happened to be my CE Advisor up at UAF in 1972) the land was unreserved. We base this presumption in a manner similar to homestead entries, that to be open and available for homesteading or in this case for a Small Tract Lease, it had to be open and unreserved prior to the filing of the application.]
- 3) Was the RS2477 offer in a period of acceptance by the Territory or State of Alaska after the survey approval and while it was still in unreserved status? [Yes....the federal RS2477 offer was made under the Mining Law of 1866. It was accepted initially by the Territory of Alaska on April 6, 1923 (A tract 4 rods (66') wide between each section of land in the Territory of Alaska is hereby dedicated for use as public highways...) The acceptance was accidentally lost between January 18, 1949 and March 20, 1953 due to a recodification of the statutes and reinstated on March 21, 1953 until the RS2477 law was repealed in 1976. So it appears that we have two available periods of acceptance: 7/12/38 to 1/18/49 and 3/21/53 to 1/3/56.

Generally, we argue that the instant we have both an approved survey and we are in a period of acceptance, if the land is in unreserved status, the SLE attaches immediately. So without further research to see if there were reserved land periods earlier than Eb Rice's application, we would say the SLE came into effect on 7/12/38 when the survey was approved. And then of course if it had been in reserved status at that time, it had to have been placed back into unreserved status to make it available for Rice's application and at that time the SLE would have attached. So the bottom line is that there appears to be a 66' wide federal SLE impacting Lot 13 of USS 3208.

This can only be removed by the processing of a section line easement vacation plat that would be run through the local platting authority and approved by the Commissioner's of DNR and DOT. The vacation plat you sent was prepared by DNR Cadastral Survey for lots owned by the State of Alaska. This is why they were subject to the wider 50' section line easement or 100' total width. Generally, individuals apply for a vacation but the unwritten philosophy at DOT is that we prefer to see an entire section line vacated at once rather than piecemeal. Also, if several property owners can get together and share the cost it would be much less painful. Of course each person might want to validate that their lot is in fact subject to the SLE before they go through the effort to have it removed.

As odd as it seems, parcels of land can go for years subject to these ROW encumbrances by RS2477 SLE's without anyone's knowledge. Sometimes this is due to the fact that the section line is un-buildable as a road or it doesn't access any other property. But it does come out as it did in this case when the owner wants to finance through an institution that wants to protect its investment and orders a survey and title report. Sorry to confirm the bad news but that's the way I see it.

PS: The reason why BLM didn't note the SLE on their lotting or Small Tract leases is that the federal interpretation is that an RS2477 grant cannot be accepted by anything other than physical construction. (as in RS2477 trail easements. However, the case law in Alaska with regard to all lands subject to State law is that the Territorial Acceptance of the RS2477 grant was valid and creates the section line easements.

Have a good vacation. JohnB

7/16/2007

John F. Bennett, PLS, SR/WA
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Toll Free: 1.800.475.2464

From: Gabrielson, Eric [mailto:eric@designalaska.com]
Sent: Friday, July 13, 2007 2:13 PM
To: Bennett, John F (DOT)
Cc: Pugh, Wiley; Kinne, William
Subject: Section Line Easement issue - Harding lake

John,

I am working with Casey and Janelle McCrackin on a section line easement issue that effects their property on Harding Lake, and I understand that you are acquaintances. It is imperative that I come to the correct conclusion on whether or not a section line easement exists within their property, and I am writing to see if you could provide an expert opinion or provide me with some guidance in my analysis.

Our survey is of Lot 13, USS 3208, located within sections 5 and 6, T6S, R5E, FM, AK.

Attached you will find the following:

- plot plan survey
- MTP with supplemental sheets for sections 5 and 6
- USRS of sections 5 and 6
- USS 3208
- Section Line Easement vacation plat
- Entry info from ALIS
- patent 1179442

The rectangular survey of sections 5 and 6 was accepted July 12, 1938. The US survey was accepted December 23, 1953. The patent number for lot 13 is 1179442. The lot was entered upon on January 3, 1956.

The section line easement was created by acceptance of the rectangular survey in 1938. The US survey was created within the township in 1953, and does not extinguish the section line easement. The date of entry falls after March 21, 1953 so legislation was in place authorizing the existence of a section line easement. All indications are that a section line easement exists.

However, the property was entered upon not as a homestead, but as a lease. Then the lease went to patent on February 11, 1958. The patent includes a 50' easement along the east boundary for roadway purposes as well. Does the lease part have anything to do with SLE's?

I find it interesting that the section line easement vacation plat only vacated the easement through specific lots and not through all of them. Maybe the included lots were under the state's possession at the time??

I am hoping I am wrong and that there is no section line easement. Any help that you could provide is greatly appreciated.

Thank you in advance.

7/16/2007

Eric L. Gabrielson, PLS
Chief of Surveys



601 College Rd.
Fairbanks, AK 99701
907-452-1241
907-456-1527 fax

Bureau of Land Management - Alaska LIS-Online Reports
Case Abstract for: AKF 012959

Reports are generated from a replicated database.
Information can be one week old.

Reports do not contain the following case types and action code,
which are Indian Trust Information:

007509, 186003, 231301, 231304, 231370, 253000, 256100, 256800, 359010
action code 445

Case Serial Num:	AKF 012959	FRC Site Code:	WAS
Case Type:	291300 Small Tract Leases	Accession Num:	
Case Status:	Closed	Box Num: of	
Case Status Actn:	Case Closed	Disp Date:	
Case Status Date:	28-FEB-1958	Location Code:	ARCHIVE

Customer Data

Custid:	000025535	Int Rel: Applicant	Pct Int: .00000
Cust Name:	RICE ELBERT F JR		
Cust Address:	BOX 266 COLLEGE AK 99709		

Administrative/Status Action Data

Date	Code/Description	Remarks	Doc ID	Ofc Emp
03-JAN-1956	001 Apln Recd/Case Estab	APPLICATION RECEIVED	--	PSF DLC
15-JAN-1956	176 Lease Issued	LEASE	--	AJADLC
31-JUL-1957	523 Purchase Apln Recd	--	--	AJADLC
11-SEP-1957	521 Field Report Receive	--	--	AJADLC
24-OCT-1957	087 Purchase Price Reque	--	--	AJADLC
14-JAN-1958	872 Final Cert Issued	--	--	AJADLC
11-FEB-1958	879 Patent Issued	--	PA0001179442	AJADLC
28-FEB-1958	970 Case Closed	TITLE TRSF	--	PSADLC
27-AUG-1992	996 Converted To Prime	--	--	940 BKM

Financial Action Data

Date	Code/Description	Ofc	Emp	Money Amt	Acct Adv	Asmt
03-JAN-1956	072 Filing Fee Received	PSF	DLC	10.00 --	--	--
03-JAN-1956	094 Rental Received	AJA	DLC	28.00 --	--	--

No Case Remarks Found

No Geographic Names Found

Land Description

Mr	Twp	Rng	Sec	Aliquot	Survey ID	Tr	Blk	Lot	Di	Bor	NR	LS	Acres		
13	6S	5E	5	--	USS 03208	--	--	13	02	090	11	PA	.5400		
Doc ID: PA0001179442				USR: 026 754 145				Patented:		.5400		Conveyed:		.5400	
Total Case Acres:												.5400			

End of Case: AKF 012959

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data. Refer to specific BLM case files for official land status information.

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Sent: Friday, July 13, 2007 2:13 PM
To: Bennett, John F (DOT)
Cc: Pugh, Wiley; Kinne, William
Subject: Section Line Easement issue - Harding lake
Attachments: Plot Plan.pdf; MTP.pdf; MTP supp sec 5.pdf; MTP supp sec 6.pdf; USRS Sheet 1.pdf; USRS Sheet 2.pdf; USS 3208.pdf; SLE vacation plat.pdf; patent.pdf

John,

I am working with Casey and Janelle McCrackin on a section line easement issue that effects their property on Harding Lake, and I understand that you are acquaintances. It is imperative that I come to the correct conclusion on whether or not a section line easement exists within their property, and I am writing to see if you could provide an expert opinion or provide me with some guidance in my analysis.

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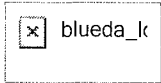
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Thank you in advance.

Eric L. Gabrielson, PLS

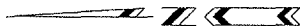
7/16/2007

Chief of Surveys



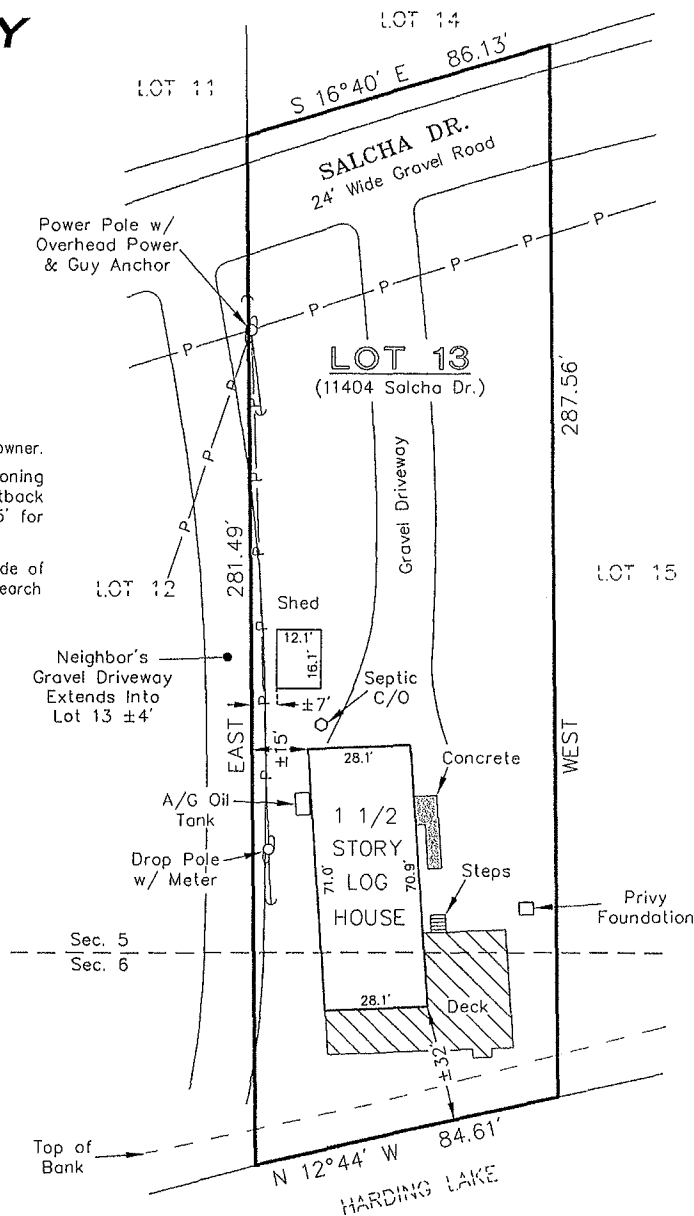
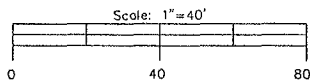
601 College Rd.
Fairbanks, AK 99701
907-452-1241
907-456-1527 fax

**LOT 13
U.S. SURVEY
NO. 3208
ALASKA**



NOTES:

1. Water holding tank is inside house, as per owner.
2. Current Fairbanks North Star Borough zoning for this property is SF-10. Building setback requirements are 20' for front yards, 5' for side yards, and 10' for rear yards.
3. A 100' section line easement, 50' each side of the section line shown, may exist. This research was not performed for this survey.



MORTGAGE LOAN INSPECTION PLOT PLAN

07-099

LOT 13, U.S. SURVEY NO. 3208, ALASKA

MORTGAGEE: Mt. McKinley Mutual Savings Bank
MORTGAGOR OR OWNER: Casey & Janelle McCrackin

INSPECTED: 7-09-07
DRAWN: 7-10-07 BY: WSK
SCALE: 1" = 40'

CERTIFICATION STATEMENT

This inspection plot is made for and at the instance of Mt. McKinley Mutual Savings Bank. I, Eric L. Gabrielson, Jr., a Registered Land Surveyor in the State of Alaska, hereby certify to the above that I am familiar with the above described property and that the improvements located thereon lie wholly within the property lines and do not overlap onto the property lying adjacent thereto, that no improvements on the property lying adjacent thereto encroach upon the premises in question, and that there are no roadways, transmission lines or any other visible easements except as indicated hereon. I further certify that this mortgagee's inspection was prepared for identification purposes only for the mortgagee in connection with a new mortgage and is not intended or represented to be a land or property line survey; that no property corners were set; and is not to be used or relied upon for the establishment of any fence, building, or other improvement lines. This survey complies with the ASPLS Mortgage Inspection Survey Standards.



Design
Alaska, Inc.

ERIC L. GABRIELSON, JR., Registered Land Surveyor
601 College Road

Fairbanks,
Alaska

Fairbanks 012959

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at **Fairbanks**, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of **June 1, 1938 (52 Stat. 609)**, as amended by the Act of July 14, 1945 (59 Stat. 467), and the acts supplemental thereto, the claim of **Elbert F. Rice, Junior**,

has been established and that the requirements of law pertaining to the claim have been met, for the ~~following described land:~~ **Lot 13 of the lands embraced in U. S. Survey No. 3208, Alaska.**

The area described contains **0.54** acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. 945), and (3) the reservation of a right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under authority of the United States or by any State created out of the Territory of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 U. S. C. sec. 321d). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305)

Excepting and reserving, also, to the United States, all oil, gas, and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said Act of June 1, 1938. This patent is subject to a right-of-way not exceeding 50 feet in width, for road-way and public utilities purposes, to be located along the east boundary of said land.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the **ELEVENTH** day of **FEBRUARY** in the year of our Lord one thousand nine hundred and **FIFTY-EIGHT** and of the Independence of the United States the one hundred and **EIGHTY-SECOND**.

[SEAL]

For the Director, Bureau of Land Management.

By *Ruth W. Talley*
Acting Chief, Patents Section.

Patent Number **1179442**