

## John Bennett

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**From:** Hicks, Troy M (DOT) <troy.hicks@alaska.gov>  
**Sent:** Thursday, November 5, 2020 1:06 PM  
**To:** John Bennett  
**Subject:** RE: take a break from the election drama - have a question

here is one of the IC. Probably some of what I was saying is just from ignorance. Some how the fed passed rights to the state, but then after seemed to pass to Doyon etc. I guess the state either said Go Ahead or they did not need to as it was not yet theirs. Shrug.

I was saying the state conveyed .. but it is the fed. Not the state. I did not see where the state gave it back to the fed. But again I didn't quite understand that stuff very well.

Yeah was an instance where FNSB platting required platting to make a ¼ section. Partly because some plat showed the areas (as outlying lands and not really the plat.)

Wanted to clear that up – I did not see the state transfer, it appears the fed did.

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**From:** John Bennett <JBennett@rmconsult.com>  
**Sent:** Thursday, November 5, 2020 12:58 PM  
**To:** Hicks, Troy M (DOT) <troy.hicks@alaska.gov>  
**Subject:** RE: take a break from the election drama - have a question

Couple more notes...

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**From:** Hicks, Troy M (DOT) [<mailto:troy.hicks@alaska.gov>]  
**Sent:** Thursday, November 5, 2020 11:52 AM  
**To:** John Bennett <[JBennett@rmconsult.com](mailto:JBennett@rmconsult.com)>  
**Subject:** RE: take a break from the election drama - have a question

Pretty much answers it.

I thought it was the state that is conveying to Doyon and the other. It is in the BLM register, but it says from the state and not from the fed. Lands were fed, then they TA to the state, then they IC (from the state to Doyon and other other.) I guess. I don't really understand that. I suppose it was fed land but state had right to it, and so they oversee the state passing that right on to another. While it is still fed land that has not finished patent. **A direct conveyance from the State to the ANCSA corp would be interesting. Have not seen anything quite like that before, possibly in part because BLM keeps such a close track on the acreage allowed by ANCSA to the corporations or by the Statehood Act to the state. Everything I've seen so far the state would reconvey lands to BLM and BLM would subsequently convey to the ANCSA Corp. In that manner they could correct the acreage balance sheet.**

The point of checking SLE was so they can see if other routes could be used.

By the way, I think the attached plat creates all the lines it shows, even though not monumented. In a similar sense typical BLM plats of townships also create the ¼ lines I think (because it is in the notes.) And I think published protracted lines on BLM plats are creating the lines (at least enough to make the SLE.) Case by case though. Shrug. **I think we have discussed this before but I can't remember the case but I think it had to do with an FNSB platting issue.**

In this case the plat came later and the lands were already conveyed to state then to native corps. SO doesn't matter anyways.

I did not find a plat to show the outer township lines. So had not considered the west side of section 31 – well I considered it but was not seeing any proof of it being a line yet. But I figured there might be.

I guess there is also an argument that the trail was put in by dozer in 1968 and so should qualify as rs2477. I don't know much about that. I am not arguing that – just repeating what I hear others saying. I don't know that much about those and other row interests – not my area. **Would need some pretty good documentation regarding public use prior to 12/14/68. This is the date of PLO 4582 aka the Alaska "Land Freeze" where all federal lands in Alaska were reserved pending development of ANCSA. This is effectively the date by which DNR holds that no more RS2477 can be created including federal SLE even though the RS2477 law wasn't repealed until the 1976 FLPMA.**

Yeah I am helping Stan justice and Tom DeLong (free) – and pretty much will tell them I don't think the section lines will have an good argument for SLE being on them.

Take care – stay warm in these usually cold days of November.

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Yeah Shitz Creek – I think I am liking it because the people are acting more and more real and being good to each other (the family). And mostly the expressions they make crack me up.

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**From:** John Bennett <[JBennett@rmconsult.com](mailto:JBennett@rmconsult.com)>  
**Sent:** Thursday, November 5, 2020 11:24 AM  
**To:** Hicks, Troy M (DOT) <[troy.hicks@alaska.gov](mailto:troy.hicks@alaska.gov)>  
**Subject:** RE: take a break from the election drama - have a question

Troy - Funny thing about Shitz Creek. We started watching it a couple of years ago, couldn't get into it and dropped it. Then recently we have heard several friends claim it was really good so we just started back and now enjoy it. Peer pressure I guess...

Well this SLE thing is kind of messy. I have to start responses like this with the caveat that I hope I am even addressing the question that was asked because it is easy to get distracted and head down the wrong trail so to speak. I see that what I think is the Tolovana Trail runs NW'ly – SE'ly across the westerly line of Section 31 so I suspect the issue is whether an SLE along that line could provide partial access in lieu of the actual trail. I see that Tom DeLong who I believe was involved with the Hot Springs applied for a 20' wide public easement from DNR in 1987 for the trail (ADL 413368). A letter of Entry was issued in 1988 but was never signed or returned so the case is shown as closed in 1992.

With regard to the SOA interest, I see that a Decision was issued by BLM on 9/28/79 noting that lands including S31, T6N R7W were proper for Selection and Tentative Approval was given. Generally a TA is considered to convey all rights of ownership but that the patent is pending approval of the township survey plat. I'm not absolutely positive of this but I think that if BLM had issued a patent to the state for S31, and then they realized they had mistakenly conveyed it because of a preceding claim (say a native allotment), BLM would negotiate with DNR for a reconveyance which would be accomplished via a Quitclaim Deed. But if the lands were TA'd and still subject to adjudication along with survey, all that might be necessary is a Decision by BLM rejecting the state's application/TA total or in part and so no reconveyance deed would be necessary. And other that protraction (discussed later) I'm not sure that DNR has asserted SLEs on TA'd lands. To me this is important because I have seen deeds where DNR has reconveyed lands to BLM as a result of these types of errors and the deed makes the reconveyed lands subject to state SLEs and other easements as they feel are appropriate.

As you stated, IC587 dated 12/27/82 conveyed the surface estate for S31 to Seth-de-ya-h and the subsurface to Doyon in IC588 and the Township plat using the two mile exterior monumentation standard was approved on November 5, 1987. If the plat had been approved prior to FLPMA in 1976, then conceivably the exterior monumented township lines could be subject to a federal SLE. This is actually very rare because in general the lands were subject to reservations prior to that time that would have prevented application of the SLE.

You did mention the potential for a federal SLE based on the date of the protraction diagrams being published in the federal register. The 1969 Opinions of the Attorney General suggested that SLEs could apply to protracted section lines but could not be used until surveyed. So a potential case for a federal SLE on the west line of S31 could be made on the basis that the protraction created the section lines back in the late '50's early '60's and that the 1987 exterior township monumentation met the AG's requirement for the survey of the section line. I have never pursued that line of thought before but when producing an airport property plan for Central Region a couple of years ago the DNR review asked why we had not shown the section line easement based on protraction. DNR was starting to get a bit more assertive about those and in fact have processed vacations to remove SLEs they argued existed based on that theory. To avoid a war with the Native Corp at that time, we agreed to not graphically show the protracted SLE but made it clear in the notes that such a possibility existed.

So for practical purposes I think I agree with you that there is no SLE on the west boundary of S31 and if pursued it would get legally challenged and cost a lot of time and money. I'm wondering whether Paula's argument is based on aboriginal rights. Is she saying that as they occupied these lands prior to claims by non-natives or the federal and state governments that their rights would prevail? I have seen that argument before and more recently with the Klutina Lake Road litigation. It pretty much gets shot down by the ANCSA provision that they waived their aboriginal land rights as a result of ANCSA. Not to say they won't keep trying but I think it is a difficult argument for them to make.

Well that's all I got. Doesn't solve the Tolovana problem but negotiating an easement might be the less expensive route to take. Time to go haul some wood in from the wood shed. JohnB

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**From:** Hicks, Troy M (DOT) [<mailto:troy.hicks@alaska.gov>]  
**Sent:** Thursday, November 5, 2020 9:05 AM  
**To:** John Bennett <[JBennett@rmconsult.com](mailto:JBennett@rmconsult.com)>  
**Subject:** Re: take a break from the election drama - have a question

I was wondering if that was a good series. Been watching Schitz Creek. Thought I would not like it. But actors really good. It grew on me. Lot of laughs.

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**From:** John Bennett <[JBennett@rmconsult.com](mailto:JBennett@rmconsult.com)>  
**Sent:** Wednesday, November 4, 2020 8:58 PM  
**To:** Hicks, Troy M (DOT) <[troy.hicks@alaska.gov](mailto:troy.hicks@alaska.gov)>  
**Subject:** Re: take a break from the election drama - have a question

Sounds like fun Troy...yep still checking email between Netflix binge watching. Just finished Queens Gambit, a great series. Never thought I would find a show about chess that was so interesting. Sounds like a doozy of an SLE problem. I'll check it out tomorrow and get back with you. Johnb

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**From:** Hicks, Troy M (DOT) <[troy.hicks@alaska.gov](mailto:troy.hicks@alaska.gov)>  
**Sent:** Wednesday, November 4, 2020 8:35:08 PM  
**To:** John Bennett <[JBennett@rmconsult.com](mailto:JBennett@rmconsult.com)>  
**Subject:** take a break from the election drama - have a question

John, still checking email?

I have a section line question. Generally I understand that stuff pretty well. But ... ha ha.

Approached by Stan Justice, the Equinox Trail guy. He is wanting to know if SLE exist on some lands. Where trail goes to Tolovana Hot Springs and the Doyon and Minto groups say NO get off our land.

Well as I get into it I see it is not all that easy – I mean regular SLE is easy for me.

I believe these sections (T6NR7W Sec31) were lands owned by the Fed (they won the war or whatever.) In Dec 16 1968 there is application filed for grant to DNR. So it seems at that point it was going to go to the state. Along with all kinds of other lands. Then at some point the state let someone make a trail to the hot springs and so on. Then apparently at some point the state agrees to convey the land to Minto and Doyon. On the BLM ACRES site this is listed as interim conveyance on Dec 4 1974. Now of course it is all being described by public land system stuff. But ... not until Nov. 5 1987 is there any plat filed.

Normally (and I think in this case) there is no SLE because there was no section line until AFTER it was conveyed. But ... it first went to the state. Then the state has it, still no section line, then the state passes it on. I imagine the state wanted there to be easements ... but since they did not do it themselves then it does not happen by automatic SLE magic. And that magic would happen only once the BLM plat files, but by then the land was no longer in states hands.

Only unusual thing about this one to me is that it was land from Fed to state. The section line law was on. But seems there was no section line yet. Not until 1987. Before then the state hands the land off to Doyon. And I think it arrived in Doyon's hands without a SLE attached.

Sigh.

Bad action by DNR. They did not protect the trail and other land interests the public would need or want. But I think that's that.

I think the State would have wanted an easement, and 100ft even, but since they did not do it explicitly themselves then there is not one. Of course can you grant yourself an easement? Well you can grant an easement to the public. But doesn't the public already have a right to all of the public land. Shrug.

Paula noted that the Doyon folks would argue they had entered the land before even it was applied for on the BLM files. But ... if it was theirs then they don't need state to give it to them. And ... I would argue that state giving it to them indicates they had to ask.

**No SLE I think.**

And I think this is the first time for me that I have seen land that was fed, then state, and still no section line easement. Because the state waited around for the fed to plat it – and that meant no section lines yet to get SLE on. And they disposed of the land and didn't first make sure it had the easements. Lame.

My question really is if land is owned by the state – and it is PLS lands (be description), then apparently it is possible there still is not SLE on the lands?

I think if a protraction plat was filed and it was state then yes they exist. But man, not when no plat at all to make any section line. I guess it is that the fed cant patent land until it is surveyed but they can set it aside and give it to someone (the state) to wait for it to be surveyed. And in the meantime that someone (the state) can pass it on to others (interim)

and all before it was surveyed. Sheesh. Hard to imagine Alaska state lands, on the PLS (at least by description), and it does not have a SLE.

- Troy