

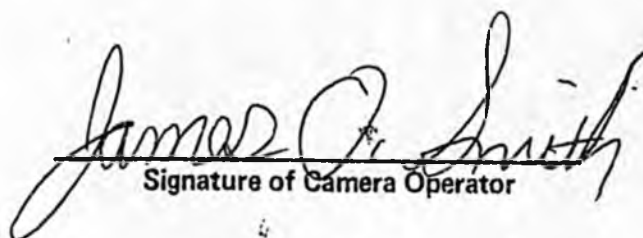
ALASKA LEGISLATIVE COMMITTEES 1903-1900 00/2

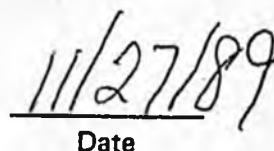
4399 STRA SB 115 - SB 141 (FILE 1) 278



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

S B

1 1 5

Offered: 2/11/85
Referred: Transportation

Original sponsor: Resources Committee

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 115 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to land use and disposal near a
7 highway right-of-way; and providing for an effective
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 19.40.200 is amended by adding new subsections to read:

11 (b) The prohibition on disposal of state land under (a) of this
12 section does not apply to a

13 (1) disposal necessary for an oil and gas lease under
14 AS 38.05.180;

15 (2) a state lease or materials sale necessary for explora-
16 tion, development, production, or transportation of oil and gas ^{North of 68 degrees north} or ^{latitude}
17 reconstruction or maintenance of the highway.

18 (c) Before the sale of materials under (b)(2) of this section to
19 a private entity or person or to a state agency the state shall give
20 due consideration to the availability of materials from private
21 sources in the area where the materials are needed.

22 * Sec. 2. AS 19.40.210 is amended to read:

23 Sec. 19.40.210. PROHIBITION OF OFF-ROAD VEHICLES. Off-road
24 vehicles are prohibited on land within five miles of the right-of-way
25 of the highway. However, this prohibition does not apply to off-road
26 vehicles necessary for oil and gas exploration, development, produc-
27 tion, or transportation or to a person who holds a mining claim in the
28 vicinity of the highway and who must use land within five miles of the
29 right-of-way of the highway to gain access to the [HIS] mining claim.

AMENDMENT TO CSSB 115 (Res)

line 16,page 1: After "oil and gas" insert:"north of 68 degrees north latitude,"

JUSTIFICATION:

This amendment would limit the changes in the law to the region containing lease sale 47 which is the lease sale that prompted the Department of Natural Resources to request this statutory change.

Reconstruction or maintenance would be allowed along the whole of the highway under this provision, and thereby allow for sales of gravel.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

MEMORANDUM

February 7, 1985

TO: All Members
Senate Resources Committee

FROM: Staff, Senate Resources Committee

RE: Proposed CS for SB 115 (Resources) "An Act relating to oil and gas exploration along highway rights-of-ways"

In 1980 the legislature passed AS 19.40.200 and .210. These sections prohibit the disposal of state land within five miles of the Dalton Highway and also prohibit the use of off-road vehicles in this same area.

Oil and gas lease sale 47 (Kuparuk Uplands) is currently scheduled to be given final notice March 22, 1985 and to take place May 21, 1985. This sale contains approximately 611,840 acres. Approximately 230,000 acres or 52 of the 113 tracts that will make up this sale are within this five mile border of the highway. If the existing statutes are not modified, these tracts could not be included in the lease sale.

The Senate Resources Committee at the request of the Department of Natural Resources, Division of Oil and Gas, introduced SB 115 to remedy this problem. A proposed committee substitute for that bill is included in this packet. The purpose of the committee substitute is the same as the original bill, it avoids, however, the words "land disposal" and confusion which had occurred over the meaning of those words.

The CS also adds an effective date clause and a sentence which deals with the state purchase and sale of materials (gravel).

The wording of the proposed committee substitute has been developed by working with representatives of the Division of Oil and Gas, the House Special Committee on Oil and Gas, Senator Ferguson's office, the Alaska Environmental Lobby and representatives of several oil companies.

BACKGROUND ON SB 115
DEPARTMENT OF NATURAL RESOURCES
February 8, 1985
Senate Resources Committee

DISPOSALS UNDER AS 38 NECESSARY FOR OIL AND GAS DEVELOPMENT:

- Oil and gas leases under AS 38.05.180 convey exploratory drilling rights and production rights for any oil and gas discovered.
- Material (sand and gravel) sales are made to private entities under AS 38.05.110-120 for roads, drill pads, offshore artificial drilling islands, causeways, and other facilities. "Sales" are also made to the Department of Transportation and Public Facilities for highway reconstruction and maintenance under AS 38.05.810 (public and charitable use).
- Oil and gas pipeline right-of-way leases under AS 38.35 are the required authorization to construct an oil or gas pipeline on or across state land.
- Leases under AS 38.05.070 are held by private service companies and contractors in the Prudhoe Bay Industrial Tract Subdivision. These companies and contractors sell, rent, and repair equipment and provide services to oil and gas lessees. Alyeska Pipeline Service Co. also holds leases (for example, construction camp site).

ACTIVITIES IMMEDIATELY AFFECTED BY THE PROPOSED LEGISLATION

- Oil and Gas Lease Sale 47 (Kuparuk Uplands) is tentatively scheduled for May 21, 1985, and contains approximately 611,840 acres. Of that total, about 230,000 acres (52 of the 113 tracts) are within five miles of the highway and would have to be deleted from the sale without the proposed clarification of existing statute. Final notice of Sale 47 is scheduled to be given March 22, 1985.
- Seismic exploration using off-road vehicles is currently prohibited within the 10-mile corridor.
- Several existing material sales to the Department of Transportation and Public Facilities, and current pending applications for continued materials requirements of Alyeska will be in jeopardy.

Supplemental Information on SB 115

The following two issues were raised after packets had been distributed to committee members yesterday after noon.

1) Oil and Gas Lease Sale 31 (Prudhoe Bay Uplands) was held September 16, 1980. AS 19.40.200 has an effective date of October 5, 1980. All except one of the lease award notices were sent to successful bidders on September 23, 1980. One award notice was issued October 7, 1980.

In order to remove any possible legal cloud regarding the leases, the Department of Natural resources, upon the advice of the Attorney General's Office, recommends that SB 115 be made retroactive to October 5, 1980.

If the committee does wish to include the retroactive effective date in the committee substitute, appropriate draft language is attached to this memo.

2) A representative of the Yukon Pacific Pipeline Company telephoned committee staff with a concern about whether communications equipment associated with the project could be installed within the right-of-way under the language of SB 115. The Department of Law has given a verbal opinion that the language of the proposed committee substitute would allow communications equipment related to oil and gas activities. It was suggested by the representative of Yukon-Pacific that the committee might wish to include a broader exemption for communication activities in the pipeline corridor within the committee substitute. If the committee wishes to do this, appropriate language is attached to this memo.

HBU 17447	28237	28255 HBP 28256	HBU 47448	HBP 47469	SOHIO HBP 28278	ARCO HBP 28277	(COND) 28298	HBU 28297	HBU 34624	HBU 34627	HBU 34628	HBU 34629	HBU 34625	MANATHON, AMERADA 1-31-90 ADL-312827	6-30- Y-0 1-31-9
HBP 28239	HBP 28238	HBP 28259	MOBIL, PHILLIPS, CHEVRON HBP 28257	HBP 28279	HBP 28278	HBP 28277	HBP 28299	HBP 28300	HBP 28301	HBP 34628	HBP 34629	HBP 34630	HBP 34635	HBP 34634	HBP 3463
CHEVRON MOBIL PHILLIPS HBP 28241	HBP 28240	MOBIL, PHILLIPS, CHEVRON HBU 47450	MOBIL, PHILLIPS HBP 28261	HBP 28260	HBP 28282	HBP 28281	HBP 28280	HBP 28304	HBP 28303	HBP 34632	HBP 34631	HBP 28320	HBP 28338	SOHIO	HBP 28343
HBP 28244	HBP 28245	CHEVRON HBP 28262	MOBIL, PHILLIPS HBP 28263	MOBIL, PHILLIPS, CHEVRON HBU 47451	HBP 28283	HBP 28284	HBP 28285	HBP 28305	HBP 28306	HBP 28307	HBP 28321	HBP 28322	HBP 28323	HBP 28339	HBP 28340
ARCO HBP 28247	(COND) 28246	MOBIL, PHILLIPS, CHEVRON HBU 47453	MOBIL, PHILLIPS, CHEVRON HBU 47452	EXXON, ARCO HBP 28264	MOBIL, PHILLIPS HBP 28288	HBP 28287	HBP 28286	HBP 28310	HBP 28309	HBP 28326	HBP 28325	HBP 28324	HBP 28343	HBP 28342	CHEVRON 10-31- 31860
ARCO HBP 28250	ARCO HBP 28249	MOBIL, PHILLIPS HBP 28266	CHEV, MOBIL, PHILLIPS HBU 47454	EXXON, ARCO HBP 28265	PHILLIPS, MOBIL, HBP 28289	SHELL, et al HBU 47471	AMERADA, GETTY HBU 47472	ARCO, EXXON HBP 28313	HBP 28312	HBP 28311	HBP 28329	HBP 28328	HBP 2834	HBP 28345	HBP 28344
PHILLIPS HBP 10-31-90 318604	HBP 28251	HBP 28267	MOBIL, PHILLIPS HBP 28269	MOBIL, PHILLIPS HBP 318608	MOBIL, PHILLIPS HBP 318609	MOBIL, PHILLIPS HBP 28290	ARCO, EXXON HBU 47476	SHELL, et al HBU 47475	MOBIL, PHILLIPS HBP 28314	HBP 28315	SOHIO HBP 28330	HBP 28331	HBP 28372	HBP 28346	HBP 28347
ARCO HBP 10-31-90 318606	ARCO HBP 10-31-90 318607	HBP 28271	HBP 28270	CHEVRON HBP 28269	BP&E, SOHIO HBP 318610	BP&E, SOHIO HBP 318611	BURGLIN et al 10-31-90 318612	BURGLIN et al 10-31-90 318613	ARCO, EXXON, HBU 28318	HBP 28335	MOBIL, PHILLIPS, CHEV, 28334	SOHIO HBP 28333	SOHIO HBP 28349	HBP 28349	CHEVRON 10-31-9 318617
ARCO HBP 318629	ARCO HBP 318636	ARCO HBP 28273	ARCO HBP 28272	BP&E, SOHIO HBP 28292	BP&E, SOHIO HBP 318642	CHEVRON HBP 28291	PHILLIPS HBP 318645	PHILLIPS HBP 318646	MOBIL, PHILLIPS HBP 28317	HBP 318651	HBP 318652	HBP 318653	C. BURGLIN, et 10-31-90 318659	10-31-90 318660	10-31-9 318661
BURGLIN et al 10-31-90 318631	ARCO HBP 318638	HBP 28274	HBP 28293	BP&E, SOHIO HBP 28294	BP&E, SOHIO HBP 318643	BP&E, SOHIO HBP 318647	PHILLIPS HBP 318648	MOBIL, PHILLIPS HBP 28318	HBP 318654	HBP 318655	HBP 318662	HBP 318665	HBP 318662	HBP 318665	HBP 318663
ARCO HBP 10-31-90 318634	ARCO HBP 10-31-90 318635	ARCO HBP 10-31-90 318639	ARCO HBP 318641	ARCO HBP 318644	HBP 28296	HBP 28295	MOBIL, PHILLIPS HBP 28319	BP&E, SOHIO HBP 318649	PHILLIPS HBP 318650	PHILLIPS HBP 318656	HBP 318658	HBP 318659	HBP 318662	HBP 318665	HBP 318664

HEMI SPRINGS UNIT

Proposed Sale 47

R12E

R14E

R16E

Sum. - 300' / ° Lt

BACKGROUND ON HB 143
DEPARTMENT OF NATURAL RESOURCES
February 6, 1985
House Oil and Gas and Resources Committees

DISPOSALS UNDER AS 38 NECESSARY FOR OIL AND GAS DEVELOPMENT:

- Oil and gas leases under AS 38.05.180 convey exploratory drilling rights and production rights for any oil and gas discovered.
- Material (sand and gravel) sales under AS 38.05.110-.120 are needed for roads, drill pads, offshore artificial drilling islands, causeways, and other facilities. "Sales" are also made to the Department of Transportation and Public Facilities for highway reconstruction and maintenance.
- Oil and gas pipeline right-of-way leases under AS 38.35 are the required authorization to construct an oil or gas pipeline on or across state land.
- Leases under AS 38.05.070 are held by private service companies and contractors in the Prudhoe Bay Industrial Tract Subdivision. These companies and contractors sell, rent, and repair equipment and provide services to oil and gas lessees. Alyeska Pipeline Service Co. also holds leases (for example, construction camp site).
u West Dock / Dendree / KIC (Kuparuk Industrial Sectn) - ,510

ACTIVITIES IMMEDIATELY AFFECTED BY THE PROPOSED LEGISLATION:

- Oil and Gas Lease Sale 47 (Kuparuk Uplands) is tentatively scheduled for May 21, 1985, and contains approximately 611,840 acres. Of that total, about 230,00 acres (52 of the 113 tracts) are within five miles of the highway and would have to be deleted from the sale without the proposed clarification of existing statute. Final notice of Sale 47 is scheduled to be given March 22, 1985.
- Seismic exploration using off-road vehicles is currently prohibited within the 10-mile corridor.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORU
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

M E M O R A N D U M

February 8, 1985

TO: All Members
Senate Resources Committee

FROM: Staff, Senate Resources *MSH*

RE: SB 115 "An Act relating to oil and gas exploration along highway rights-of-way."

Supplemental Information on SB 115

The following two issues were raised after packets had been distributed to committee members yesterday afternoon.

1) Oil and Gas Lease Sale 31 (Prudhoe Bay Uplands) was held September 16, 1980. AS 19.40.200 has an effective date of October 5, 1980. All except one of the lease award notices were sent to successful bidders on September 23, 1980. One award notice was issued October 7, 1980.

In order to remove any possible legal cloud regarding the leases, the Department of Natural Resources, upon the advice of the Attorney General's Office, recommends that SB 115 be made retroactive to October 5, 1980.

If the committee does wish to include the retroactive effective date in the committee substitute, appropriate draft language is attached to this memo.

2) A representative of the Yukon Pacific Pipeline Company telephoned committee staff with a concern about whether communications equipment associated with the project could be installed within the right-of-way under the language of SB 115. The Department of Law has given a verbal opinion that the language of the proposed committee substitute would allow communications equipment related to oil and gas activities. The Department of Law advised that to make certain there was no question on this issue, a letter of intent should be adopted specifying that communication facilities related to oil and gas projects are among the allowed uses. Such a letter of intent is attached.

It was suggested by the representative of Yukon-Pacific that the committee might wish to include a broader exemption for communication activities in the pipeline corridor within the committee substitute. If the committee wishes to do this, appropriate language is available and the letter of intent would not be needed. This type of broadening, however, may jeopardize the support of some of the parties with whom the committee substitute has been developed.

SENATE AMENDMENT

By _____

To: CS _____ SENATE BILL No. 115 (Resources) _____

To: _____ HOUSE BILL No. _____

PAGE: 2 LINE: 2

Sec. 4. This Act is retroactive to October 5, 1980.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

February 8, 1985

COMMITTEE ON RESOURCES
LETTER OF INTENT
FOR
SB 115

It is the intent of the Senate Resources Committee that leases necessary for communication equipment or facilities related to oil or gas activity is included as allowable under Section 1(b)(2) of CS SB 115 (Resources).

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Falks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

MEMORANDUM

TO: Committee Members

FROM: Committee Staff *BL*

DATE: 2-15-85

RE: SB 115 Rights of Way for Oil and Gas Exploration

Enclosed is the backup for Senate Bill 115 from the first committee of referral, Resources. Their analysis of the bill and the back up is thorough. The committee staff does not see anything substantial that we can add to the bill analysis at this time.

Offered: 2/11/85
Referred: Transportation

Original sponsor: Resources Committee

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 115 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to land use and disposal near a
7 highway right-of-way; and providing for an effective
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 19.40.200 is amended by adding new subsections to read:

11 (b) The prohibition on disposal of state land under (a) of this
12 section does not apply to a

13 (1) disposal necessary for an oil and gas lease under
14 AS 38.05.180;

15 (2) a state lease or materials sale necessary for explora-
16 tion, development, production, or transportation of oil and gas or
17 reconstruction or maintenance of the highway.

18 (c) Before the sale of materials under (b)(2) of this section to
19 a private entity or person or to a state agency the state shall give
20 due consideration to the availability of materials from private
21 sources in the area where the materials are needed.

22 * Sec. 2. AS 19.40.210 is amended to read:

23 Sec. 19.40.210. PROHIBITION OF OFF-ROAD VEHICLES. Off-road
24 vehicles are prohibited on land within five miles of the right-of-way
25 of the highway. However, this prohibition does not apply to off-road
26 vehicles necessary for oil and gas exploration, development, produc-
27 tion, or transportation or to a person who holds a mining claim in the
28 vicinity of the highway and who must use land within five miles of the
29 right-of-way of the highway to gain access to the [HIS] mining claim.

1 * Sec. 3. This Act is retroactive to October 5, 1980.

2 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-

3 10.070(c).

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

February 8, 1985

COMMITTEE ON RESOURCES
LETTER OF INTENT
FOR
SB 115

It is the intent of the Senate Resources Committee that leases necessary for communication equipment or facilities related to oil or gas activity is included as allowable under Section 1(b)(2) of CS SB 115 (Resources).

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 115
 Title: Exploration and Development
1. Highway Rights-of-Way
 Sponsor: _____
 Requestor: Sen. Sturgulewski
 Date of Request: 1/31/85

FISCAL DETAIL

Agency Affected: Natural Resources
 Program Category Affected: NRMEC
 BRU, Program or Subprogram(s) Affected: Minerals and Energy Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar
 Division: Commissioner's Office

Phone: 465-2400
 Date: January 31, 1985

Approved by Commissioner: Wm D Amory
 Agency: Natural Resources

Date: January 31, 1985

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 12, 1985

The Honorable Arliss Sturgulewski, Chairman
Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

FEB 14 1985

Re: CSSB 115 (Res)

Dear Senator Sturgulewski:

Kay Brown, director of the division of oil and gas, has asked us to respond to your inquiry whether there would be any negative legal implications from the retroactive application of the proposed amendments to AS 19.40.200 - 19.40.210 contained in the referenced bill. 1/ We believe that there would not.

Although retrospective laws are generally not favored, curative legislation is encouraged. Here, the legislation is in part being proposed to validate certain existing AS 38.05 disposals and off-road vehicle activities which might otherwise be void for failure to conform with the existing proscriptions of

1/ You will recall that the inquiry was made at your meeting of February 8, at which time Ms. Brown proposed that the provisions of CSSB 115 (Res) be made retroactive. We had earlier advised Ms. Brown that any question regarding the validity of existing uses of state land along the Dalton Highway could be resolved in the context of an attorney general's opinion. However, on February 4, it was brought to our attention that at least one existing oil and gas lease would be void unless made valid by retroactive application of the proposed amendments contained in the bill.

AS 19.40.200 - 19.40.210. These disposals and activities were authorized by state officials under the mistaken belief that the provisions of AS 19.40.200 - 19.40.210 were limited in scope to certain circumstances of primary concern to the legislature when the original Act was passed, namely, the prohibition of cabin site and other land surface disposals under AS 38.05 and of hunting with ORVs along the Haul Road corridor. The plain language of the statute, however, exceeds this narrow application, even though a broad interpretation reportedly was not the legislature's original intent.

Nevertheless, even curative legislation must comply with certain legal requirements. Among these is the requirement of AS 01.10.090 for an express statement of retroactivity. The legislative drafting manual suggests that language providing for retroactive application of a bill be set out in a separate section immediately preceding the effective date section, and that the retroactive section and the sections of the bill that are to be retroactive have immediate effective dates. Thus, CSSB 115 (Res) should contain an additional section to read:

* Sec. 3. Sections 1 - 2 of this Act are retroactive to October 5, 1980. 2/

From a constitutional standpoint, a curative Act may not impair the obligation of contracts, take property without due process of law, or interfere with purely judicial matters. We are not aware of any potential problems arising in these three areas of concern if the presently proposed amendments to AS 19.40.200 - 19.40.210 are made retroactive to the effective date of the original Act. To the contrary, retroactive application will avoid the possibility of finding invalid existing uses of state land previously authorized by state officials.

In sum, we are of the opinion that CSSB 115 (Res), which grants new rights rather than takes away existing rights,

2/ The present Section 3, providing for an immediate effective date, would be renumbered Section 4.

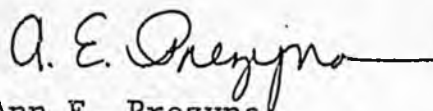
The Honorable Arliss Sturgulewski, Chairman
Senate Resources Committee

February 12, 1985
Page 3

will present no negative legal implications if its provisions are applied retroactively. To the contrary, because of the uncertain validity of some existing uses of state land, we strongly encourage inclusion in the bill of a retrospective clause such as the one we have suggested.

Very truly yours,

NORMAN GORSUCH
ATTORNEY GENERAL



By: Ann E. Prezyna
Assistant Attorney General

AEP/ma

cc: Kay Brown, Director
Division of Oil and Gas
Department of Natural Resources

Arthur H. Peterson
Assistant Attorney General
Department of Law - Juneau

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

January 31, 1985

The Honorable Arliss Sturgulewski
Chairman, Senate Resources Committee
Pouch V
Juneau, AK 99811

Dear Senator Sturgulewski:


The Department of Natural Resources is requesting amendment of AS 19.40.200 and AS 19.40.210 to allow oil and gas exploration and development within five miles of the right-of-way of the Dalton Highway (North Slope Haul Road).

The statute presently prohibits the disposal of state land under AS 38 and use of off-road vehicles within five miles of the highway. "State land" under AS 38 includes oil and gas leases for exploration and production rights.

Although the department does not believe it was the intent of the 1980 Legislature to prohibit oil and gas activities along the highway, the statute as presently written may be interpreted to have that effect. Oil and Gas Lease Sale 47 (Kuparuk Uplands) is tentatively scheduled for May 21, 1985 and contains approximately 611,840 acres. Of that total, some 230,000 acres (52 of the 113 tracts) are within the five-mile corridor and will have to be deleted from the sale without clarification of the statutes cited above. Final notice of Sale 47 is scheduled to be given March 22, 1985.

I appreciate the willingness of your Committee to introduce SB 115, which would rectify the apparent oversight. Thank you in advance for your consideration and timely action on the bill.

Sincerely,


Esther C. Wunnicke
Commissioner

...the... granted... participation in the construction and maintenance of local service roads under AS 19.30.111 — 19.30.241. (§ 2 ch 84 SLA 1971)

Chapter 35. Relocation Assistance.

Section
10 — 109. [Repealed]

Sec. 19.35.010 — 19.35.100.

Repealed by § 2 ch 41 SLA 1971.

Editor's notes. — The repealed chapter derived from § 1, ch. 60. SLA 1969; §§ 50, 51, ch. 69. SLA 1970. Section 3, ch. 41, SLA 1971, provides: "This Act is retroactive to January 2, 1971."

Chapter 40. James Dalton Highway.

Section
10. Declaration of policy
15. Highway named
20. Contractual authority
30. Undertakings of contractor
40. Exemption
50. Highway width
60. Conditions to be met
65. Regulations and penalties
70. Conflict with other laws

Section
80. Definitions
100. Use of the highway by industrial or commercial traffic
110. Public use of a portion of the highway
120. Closure of the highway to traffic
200. Prohibition on disposal of land within five miles of the highway
210. Prohibition of off-road vehicles

Sec. 19.40.010. Declaration of policy. (a) The legislature finds and declares that there is an immediate need for a public highway from the Yukon River to the Arctic Ocean and that this public highway should be constructed by the State of Alaska at this time because

(1) it will assist in the fulfillment of the Constitution of the State of Alaska, art. VIII, § 1, in which it is provided that it is the policy of the state to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest;

(2) it will provide the first year-round, overland route from north of the Yukon River to the Arctic Ocean, and will consequently result in the completion of a highway from the Pacific Ocean to the Arctic Ocean;

(3) it is in conformity with the policy of the Federal-Aid Highway Act of 1956, 23 U.S.C. 101(b), in which it is declared to be in the national interest to accelerate the construction of certain highways which are of primary importance to the national defense;

(4) it will benefit local and interstate commerce because the area north of the Yukon River is rich in natural resources but is inaccessible at the present time because of the lack of roads and this inaccessibility prohibits the successful use of the natural resources of this area;

(5) it is consonant with the Constitution of the State of Alaska, art. VIII, § 2, in which it is provided that the legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the state, including land and waters, for the maximum benefit of its people, because the highway will benefit not only local and interstate commerce but will also augment the revenues of the state and result in conservation of natural resources, for example, by facilitating a system of forest fire suppression.

(b) It is the sense of the legislature that the construction of the highway will not impair the natural wilderness adjacent to the highway and will not unreasonably interfere with subsistence hunting, fishing, trapping and gathering.

(c) It is the intent of the legislature that the state shall be reimbursed for the cost plus interest of constructing the public highway from the Yukon River to the Arctic Ocean.

(d) It is the intent of the legislature that employment of Alaska residents be encouraged and that the provisions of AS 36.10.010 — 36.10.110 be complied with. (§ 1 ch 231 SLA 1970)

Editor's notes. — AS 36.10.110, referred to in subsection (d), was repealed by § 17, ch. 142, SLA 1972.

Sec. 19.40.015. Highway named. The highway is named the James Dalton Highway. (§ 2 ch 10 SLA 1981)

Editor's notes. — Section 1, ch. 10, SLA 1981 provides: "FINDINGS AND INTENT. The legislature finds that James Dalton's exploration of the North Slope and his report on petroleum possibilities there contributed greatly to the subsequent development of the area, including the construction of the North Slope haul road. Therefore the legislature finds it appropriate that James Dalton be remembered by naming the North Slope haul road after him."

Sec. 19.40.020. Contractual authority. (a) Subject to (b) of this section, the department may contract for the construction of a secondary highway from the Yukon River to the Arctic Ocean. The department may request bids and award contracts for the construction of the highway, or it may elect to directly negotiate contracts for the construction of the highway if it appears to be in the best interests of the state. The provisions of AS 36.10 govern in employment practices on all work authorized by this chapter.

(b) The authority granted under (a) of this section may not be exercised until the state enters into a contract with the participants in the Trans Alaska Pipeline System or other organization formed for the purpose of transporting oil by pipeline from the North Slope (that area of Alaska lying north of 68° latitude). The contract shall provide for reimbursement to the state by the participants, jointly and severally, in the Trans Alaska Pipeline System or other organization formed for

see 3rd page for affected statutes

transporting oil by pipeline, of the full amount of the of construction plus interest on the state's expenditures of seven and one-half per cent per year. Complete together with interest must be made within five years of the contract. The state may, with the agreement of the contractor, to construct an oil pipeline from the North Slope. In provisions of this subsection requiring reimbursement

contract with the participants shall include such additional provisions as appear to be in the best interests of the state. Payments made under such a contract shall be deposited in an account which will be used for disbursements to the contractor during construction of the highway. Disbursements to the contractor shall be made on order of the commissioner of transportation and public facilities on presentation of a proper voucher or the receipt of a voucher by an employee of the department authorized to certify as to such payment. (§ 1 ch 231 SLA 1970; amended by Executive Order No. 39, § 11 (1977))

Amendments. The 1977 amendment substituted a reference to the commissioner of highways in the third sentence of subsection (c). Facilities for a reference to the Department of Transportation and Public

30. Undertakings of contractors. The department, in contracts or individual sureties required by AS 36.25.010, may require undertakings which include the same essential provisions or individual sureties required by AS 36.25.010 and refer the contractor to the department. (§ 1 ch 231 SLA 1970)

40. Exemption. The Alaska Net Income Tax Act and the Business License Act do not apply to any money received by a contractor from the state under a highway construction contract authorized under this chapter if the money is to be paid to a contractor for work performed under the construction contract. The liability of the subcontractors is subject to the Alaska Net Income Tax Act, the Alaska Business License Act and any other laws relating to taxes. (§ 1 ch 231 SLA 1970)

50. Highway width. In accordance with AS 19.10.015, a highway is designated as 200 feet. (§ 1 ch 231 SLA 1970)

60. Conditions to be met. Construction authorized under AS 19.40.020 — 19.40.050 may not be undertaken until all of the following conditions are met:

(1) approval by the commissioners of the Department of Natural Resources, the Department of Fish and Game that adequate precautions be taken to protect and preserve the total ecology of the area to be used;

(2) certification by the commissioner of the Department of Transportation and Public Facilities that the road design and construction methods will cause minimal landscape defacement or environmental degradation by erosion or waste disposal;

(3) certification by the commissioner of the Department of Health and Social Services that adequate and reasonable precautions have been taken for the prevention of pollution during construction and subsequent public use;

(4) all certifications, as well as the rules, regulations, contract provisions, specifications, inspection procedures and programs necessary to implement and accomplish AS 19.40.020 — 19.40.050 shall be filed with the governor's office and published;

(5) the governor has approved all certifications and supporting material submitted to him under (4) of this section as being in the best public interest, and has certified that the contract required by AS 19.40.020 has been executed. (§ 1 ch 231 SLA 1970; am § 6 ch 104 SLA 1971; am Executive Order No. 39, § 11 (1977))

Effect of amendments. — The 1977 amendment substituted a reference to the Department of Transportation and Public Facilities for a reference to the Department of Highways in paragraph (2).

Sec. 19.40.065. Regulations and penalties. All departments and agencies of the state are given the specific authority to adopt under the Administrative Procedure Act (AS 44.62) emergency, temporary and permanent regulations necessary to accomplish the purposes of AS 19.40.020 — 19.40.050. The violation of any regulation adopted under AS 19.40.020 — 19.40.050 is a misdemeanor and upon conviction the person is punishable by a fine of not more than \$10,000 for each offense. (§ 1 ch 231 SLA 1970)

Sec. 19.40.070. Conflict with other laws. In the event of a conflict between this chapter and any other law of this state, the provisions of this chapter govern and supersede any such other law. (§ 1 ch 231 SLA 1970)

Sec. 19.40.080. Definitions. In this chapter

(1) "department" means the Department of Transportation and Public Facilities;

(2) "highway" means the secondary highway from the Yukon River to the Arctic Ocean. (§ 1 ch 231 SLA 1970; am Executive Order No. 39, § 11 (1977))

Effect of amendments. — The 1977 amendment substituted a reference to the Department of Transportation and Public Facilities for a reference to the Department of Highways in paragraph (1).

Use of the highway by industrial or commercial department shall maintain the highway and keep it open for public or commercial traffic throughout the year. "Public use of a portion of the highway" means any use necessary and related to resource exploration and development, or support of those activities, if the individual engaged in such use has all necessary permits; or any use necessary and related to access by local residents to their property.

Persons engaged in commerce which are common carriers are regulated by the Alaska Transportation Commission. 10. (§ 3 ch 177 SLA 1980)

Public use of a portion of the highway. The department shall maintain the section of the highway between the Dietrich Camp and shall keep that section of the highway open for public use by the public between June 1 and September 1. 10. 177 SLA 1980; AS 19.40.120)

This section was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Closure of the highway to traffic. The provisions of this section apply to the closure of the highway by the department. 10. 1980; AS 19.40.110)

This section was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Prohibition on disposal of land within five miles. The state may not dispose of state land under any contract within five miles of the right-of-way of the highway. 10. 1980)

For reports. For 1781. For attorney general's opinion advising the governor that the house and senate did not pass the same bill, see Op. Atty. Gen. July 1, 1980.

Prohibition of off-road vehicles. Off-road vehicles on land within five miles of the right-of-way of the highway; this prohibition does not apply to a person who is driving a vehicle in the vicinity of the highway and who must use the right-of-way of the highway to gain access to the land. (§ 5 ch 177 SLA 1980; AS 19.40.200(b))

This section was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Chapter 45. Miscellaneous Provisions.

Section

01. Definitions

02. Penalties

15. Highway construction near airports

Sec. 19.45.001. Definitions. In AS 19.05 — 19.40

(1) "commissioner" means the commissioner of transportation and public facilities;

(2) "construction" or any derivation means construction, reconstruction, alteration, improvement or major repair;

(3) "controlled-access highway" means a highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have either no right or easement or only a controlled right or easement of access, light, air, or view;

(4) "cost of change, relocation, or removal" means the entire cost incurred by the utility properly attributed to the change, relocation, or removal of a facility, less any costs for improvements or upgrading over and above the cost of a functionally equal facility; if a facility is to be relocated and replaced with new equipment, there shall also be subtracted from the entire cost any salvage value derived from the old facility;

(5) "department" means the Department of Transportation and Public Facilities;

(6) "excess lands" means land acquired by the state in excess of land required for a highway, when the remaining portion of a parcel of land so acquired is left in such shape or condition as to be of little or no value to its owner, or to give rise to claims or litigation concerning severance or other damage;

(7) "federal-aid primary, federal-aid secondary, and interstate system" include any highway which is a part of the federal-aid systems as provided in the Federal-Aid Highway Act of 1956, and any laws amending or supplementing it;

(8) "highway" includes a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;

(9) "maintenance" means the preservation of each type of highway, roadside structure and facility as nearly as possible in its original condition as constructed, or as subsequently improved, and the operation of highway facilities and services to provide satisfactory and safe highways;

(10) "municipality" means an incorporated city or political subdivision which has jurisdiction over highways in its incorporated area;

Relevant Statutes

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Title 19: Highways and Ferries

§ 19.45.002

ALASKA STATUTES

§ 19.45.002

(11) Repealed by § 6 ch 233 SLA 1968.

(12) "utility" includes railroads and all publicly, privately, or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, telecommunications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including publicly owned fire and police signal systems and street lighting systems;

(13) "encroachment" means and includes a tower, pole, pole line, pipe, pipeline, driveway, private road, fence, billboard, stand or building, or a structure or object of any kind which is or has been placed in, on, under or over a portion of a highway or road. (§ 1 ch 57 SLA 1961; § 3 art I title I ch 152 SLA 1957; am § 3 ch 124 SLA 1959; am § 1 ch 122 SLA 1960; § 1 art V title II ch 152 SLA 1957; § 3 (14) art I title I ch 152 SLA 1957; added by § 2 ch 122 SLA 1960; § 2 ch 59 SLA 1949; am § 1 ch 86 SLA 1953; am §§ 4, 5 ch 49 SLA 1963; am § 6 ch 233 SLA 1968; am § 29 ch 32 SLA 1971; am § 1 ch 64 SLA 1971; am §§ 1, 2 ch 106 SLA 1977; am Executive Order No. 39, § 11 (1977); AS 19.05.130)

Revisor's notes. — This section derives from AS 19.05.130 and was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Effect of amendments. — The first 1977 amendment substituted the language beginning "facility, less any costs for improvements" and ending "subtracted from the entire cost" for "utility after deducting any increase in the value of the new facility and" in paragraph (4) and rewrote paragraph (12).

The second 1977 amendment substituted references to the commissioner of transportation and public facilities and to the Department of Transportation and Public Facilities for references to the commissioner of highways and to the Department of Highways in paragraphs (1) and (5), respectively.

Legislative history reports. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

NOTES TO DECISIONS

Applied in *State v. L'Anson*, Sup. Ct. Op. No. 1102 (File No. 2032), 529 P.2d 188 (1974).

Sec. 19.45.002. Penalties. A person who violates any provision of chs. 5-25 of this title is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$500, or by imprisonment in jail for a period not to exceed one year, or by both. (§ 7 art VII title II ch 152 SLA 1957; AS 19.05.140)

Revisor's notes. — This section derives from AS 19.05.140 and was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Cross references. — As to sentences for misdemeanors, see AS 12.55.135.

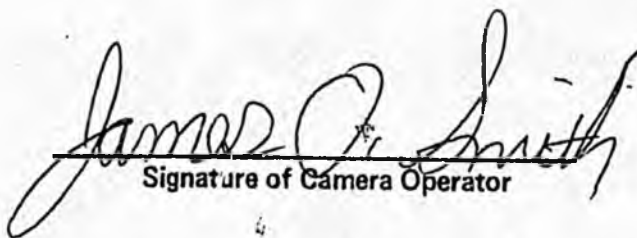
Collateral references. — 25 Am. Jur., Highways and Streets, § 73.

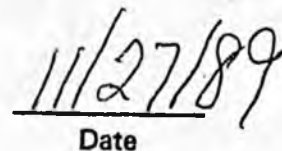


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SB

141
File 1

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Falks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

MEMORANDUM

To: Committee members
From: Chairman Coghill
Date: February 19, 1985
Re: SB 141, Relinquishment of rights-of-way

As the attached background information will show, SB 141 is intended to release the State's claim to certain portions of highway rights-of-way which were not clearly identified in land patents. This has given rise to the problem faced by many landowners who live or hold land adjacent to highways the State now wishes to upgrade, straighten or expand and who have been or could be abruptly and without compensation deprived of land they assumed was theirs, and which their legal documents have not identified as belonging to the government.

These rights-of-way were withdrawn by the federal government through public land orders or as a result of various Acts of Congress during territorial days, and did not necessarily make their way either to the homesteaders' patents or the district recorders' offices. This has subsequently caused heavy liabilities for the state's title insurance companies, who traditionally insure property based upon what has been recorded at the recorder's office, not upon what has been published in the Federal Register.

As this problem has evolved, the State Supreme Court has ruled that the State's claims to the rights-of-way are valid, and therefore, title insurers are liable for any claims by the insured for takings for which the State has declined to compensate the property-owner. Of course, this presumes that the property-owner has title insurance. In the many instances where the property-owner does not, he or she is simply out of luck, and has no recourse to gain compensation.

The background material will more completely go into the history of the problem, however, a brief explanation of the enormous fiscal note may be in order. We are not sure how DOT/PF generated this much fiscal impact, but assume they have figured the repurchase price at top market value, and of the entire width of right-of-way (in other words, the entire 300 or 500 feet, not just the portion they will actually need to expand a road).

COMMITTEE STAFF SYNOPSIS

MEMORANDUM RE HOUSE BILL
TO RELINQUISH RIGHTS-OF-WAY

Alaska achieved statehood twenty-five years ago. Before statehood the Department of Interior, through certain Public Land Orders, took rights-of-way for roads from landowners without compensating the landowners. Since statehood the Department of Transportation and Public Facilities (DOTPF), acting for the State of Alaska, is still taking private property without compensating the landowners.

In 1966, the Alaska State Legislature enacted Ch. 92 (HB 415 am) which prohibited such takings by the State. The purpose of the law was to "alleviate economic hardship and physical and mental distress occasioned by the taking of land by the State of Alaska [for] which no compensation is paid to the person holding title to the land." The Legislature prohibited any further utilization of rights-of-way pursuant to various Public Land Orders and federal acts.

At the time of Statehood the State received a quit claim deed from the federal government conveying to the State certain roads built by the United States. DOTPF claims that the quit claim deed also conveyed certain easements or rights-of-way that were not described therein but included in Public Land Orders that were not even recorded in the various Recorders Offices throughout the state. DOTPF presently claims a right to highway rights-of-way varying in width from 100 to 300 feet surrounding

PROPOSER'S SUMMARY

every major highway in the state and a smaller easement for most of the local roads throughout the state. When DOTPF determines that it needs to expand or modify an existing roadway where it claims a right-of-way exists by virtue of the federal government, it does so without paying compensation to the landowner for the value of the property taken.

The reservations for rights-of-way and easements were made by the federal government between 1947 and 1956. They were set forth in a series of Public Land Orders (namely PLO 601, 757, and 1613) and a Department of Interior Order (DO 2665) which were not recorded in District Recorders Offices in Alaska but were published in the Federal Register, which was a publication utilized by federal agencies.

The rights-of-way and reservations were not specifically included in the patents issued to homesteaders in Alaska. Homesteaders in Alaska were not informed of the existence of the easements and rights-of-way at the time they were issued patents and did not know the federal government was claiming a portion of their property for highway purposes. Now DOTPF is claiming right-of-way easements in the same way by virtue of the quit claim deed mentioned above.

No landowner or member of the public can know where DOTPF claims a right-of-way easement because those easements are not recorded and are not shown on plats available in the Recorder's Offices.

The Supreme Court of Alaska, in State v. A.L.T.A., has held that the easements are valid. The decision is wrong and must be reversed through the enactment of a law that will relinquish these easements and require DOTPF to pay just compensation for lands taken by them.

TAKING OF RIGHTS-OF-WAY
WITHOUT COMPENSATION

In recent years there has been a tremendous amount of road construction by the State of Alaska to serve the needs of the State's growing population and economic development. An important part of building new roads and expanding old ones is establishing the right-of-way upon which the road can be constructed. In the Lower 48 and, to some extent in Alaska, when a state wishes to construct a road it purchases the right-of-way across private land either by direct negotiation or by condemnation. Thus, a private land owner whose property is effected by a highway is compensated for the loss of the use of his property.

This is not so for a large number of land owners in Alaska. The State of Alaska has determined that it can take rights-of-way and expand existing roads over private property without compensation to the land owners based upon some obscure federal regulations and statutes, despite the fact the Alaska State Legislature has already made one attempt to prohibit such takings.

In order to understand how the State can claim an easement or right-of-way for highway purposes across private land without paying compensation one must look at the history of road development in Alaska. Prior to 1947, there were two primary ways by which roads could be established. The first was by appropriation. Under the doctrine of appropriation, if the federal government wished to build a road, it could do so on public lands simply by expending money for the construction of the road. As a matter of custom the width of such roads was generally 33 feet either side of the center line.

Roads were also established prior to 1947 under a special federal statute (48 U.S.C. §932) which granted the right to the public to construct highways across vacant and unappropriated federal public lands. Several territorial enactments established a right-of-way along all section lines in the state four rods (66 feet) wide.

Following World War II numerous veterans found Alaska an appealing place to live and migrated to our state, These Homesteaders soon had identified parcels for entry and proceeded to lawfully obtain title to these lands. The Department of Interior which was responsible for the construction of most roads in Alaska through the Alaska Road Commission soon discovered that

its road construction could not keep up with the pace of settlement. Homesteaders would often enter the property before the Alaska Road Commission could build a road by appropriation. Once the homesteader entered the property the right to build a road by appropriation was lost since the property was no longer considered public lands.

To remedy this problem, Congress passed a law in 1947 requiring a general reservation for highway rights-of-way be placed in all patents where the homesteader entered after July 24, 1947. It was envisioned that as the Alaska road network developed in the territory, the Alaska Road Commission could then construct a road across the patented property even though it was no longer in the hands of the federal government.

Unfortunately, the 1947 law did not establish where the roads were or their width. This placed the homesteader at risk, that, at any time in the future, a road could be constructed across his property. In 1949 the Department of Interior attempted to clarify this problem by publishing Public Land Order No. 601 which established the width for various types of roads in Alaska. The Public Land Order withdrew from the public domain strips of land along all highways in Alaska. By withdrawing the strips of land the federal government actually made those portions of federal public lands unavailable for homesteading.

PLO 601 established several classifications of roads. For through roads such as the Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, and Tok Cutoff; the right-of-way was 150 feet either side of center line or 300 feet total. For feeder roads such as the Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Porter-Indian Road, etc. the rights-of-way was 100 feet either side of center line or 200 feet total. The last classification was entitled local roads and represented a withdrawal of 50 feet either side of center line or 100 feet total. However, unlike the through roads and feeder roads, local roads were not specifically identified by name.

The problem with PLO 601 was that homesteaders who entered their property after August of 1949 were often not told that their property might be effected by PLO 601.

The BLM was required, because of the withdrawal by PLO 601, to survey those withdrawals and to post them to their plats. Additionally they were required to tell a homesteader who entered the property and who claimed land under his application which was effected by the PLO 601 that his homestead could not include those lands which PLO 601 effected. The BLM did neither. The

cost and manpower involved in identifying and surveying the property effected by the Public Land Orders and posting it to the plats was beyond the physical and fiscal capability of the BLM in the late 40's and early 50's.

As a result of local BLM protest to Washington the Department of Interior recognized the difficulties inherent in the withdrawals under PLO 601. In 1951 therefore they published PLO 757 which ended the withdrawals as to local and feeder roads and simultaneously published Department Order 2665 which converted those withdrawals to easements. Therefore, a homesteader who entered the property after D. O. 2665 could claim up to the center line of a local or feeder road but would take subject to an easement in favor of the federal government. But, as had happened when PLO 601 was in effect, many homesteaders were not informed of the full nature of the federal government's interest in their property. Some homesteaders had the existence of the local or feeder road easement noted in their prepatented documents but many did not. The easement was never noted in the patent that was issued to them.

The last difficulty associated with these rights-of-way was that the withdrawal that had remained in effect as to through roads. Congress in the late 1950's decided to sell the withdrawn land to the adjoining land owners and convert the remaining through road withdrawals to easements. The Department of Interior published Public Land Order 1613 which converted the withdrawals to easements and the underlying fee was to be sold to the then current adjoining land owner.

The Department of Interior did not immediately institute the program because of Statehood in 1959. During the transition phase much of the federal responsibility for highways and highway rights-of-way passed to the State of Alaska. The State claims its interest to the rights-of-way pursuant to a quitclaim deed issued by the Federal Government in 1959. The State did not bother to record the quitclaim deed until 1969. Thus, there was no document of record in a recording district by which the State claimed any title. The United States government had also never placed the easements of record in the territorial commissioner's office (the predecessor to recorders office).

In the mid 1960's the Bureau of Land Management once again rediscovered its obligations under PLO 1613 to convey the land to the adjoining land owner. It sent out to many of the adjoining land owners notices that they had the right to purchase the underlying fee to the highway along their property. Some of the adjoining land owners paid the purchase price. However, because

of the general freeze on the conveyancing of federal lands in Alaska the federal government failed to issue patents to those individuals.

In the last two years the BLM has once again discovered its obligations under PLO 1613 and have now made the property available to the adjoining land owners, but at today's prices. Further, where the 1965 adjoining land owner had filed an application to purchase and paid his purchase price in 1965, the BLM will now issue the patent to him and not the current adjacent land owner. This causes a great concern among current land owners who believed that they owned the property in front of their homes and businesses. It is conceivable that not only will they have an interloper between themselves and the highway but perhaps even a loss of access to their property.

In 1966, the Alaska legislature became aware that the State was building certain roads along these federally created highway rights-of-way without paying compensation. The only land owners which were effected by this unfair taking were those who entered the property after July of 1947 and before statehood. All other Alaskans were entitled to compensation if such a taking occurred on their property.

Representative Hillstrand brought the issue before the Alaska legislature and they virtually unanimously agreed that such a taking was unfair and unjust to the land owners. The legislature in 1966 therefore passed the Right-of-Way Act of 1966 which barred the state from taking any further land under the grants by the federal government. Between 1966 and 1970 the State therefore paid citizens in Alaska for highway construction and expansion on their lands. Indeed, in 1970 the commissioner for the Department of Transportation testified before the United States Congress that the State had paid several million dollars to land owners in compensation for the federal rights-of-way which had been created in the 1940's and 50's.

In the early 1970's however the problem re-emerged. The rapid increase in the population of Alaska and development of its economy required the State to build additional roads and to expand existing roads to accommodate the growth. In the mid 1970's the State once again began to take property under the 1947 Act. When confronted with the 1966 Act which barred the State from taking property without compensation, the State came up with a legal theory circumventing the Act. In the late 1970's and early 1980's several cases went to the Alaska Supreme Court concerning whether the State had a highway right-of-way across private land which it could take without compensation. In each

of those cases the trial court after having heard the evidence and arguments by the State and land owners ruled in favor of the land owners. In each case the Alaska Supreme Court reversed.

The Alaska Supreme Court's reversal rests on two weak premises. First, that the Alaska legislature in 1966 intended only to end those easements under the 1947 act. The Court's second premise was that the 1947 Act was an independent statute and did not modify the prior act authorizing the Secretary of Interior to build roads in Alaska. The Court found that that prior legislation which authorized the Secretary of Interior to build highways in Alaska permitted him to also create easements independent of the fact that Congress in 1947 modified the law to require that those easements be placed in the patent. Since Department Order 2665 states that it is promulgated under the Department of Interior's responsibility to construct roads in Alaska Department Order 2665 survives the 1966 Act and is not affected by it.

The position of the Alaska Supreme Court seems incredible. It is difficult to believe that in 1966 the Alaska Legislature was only doing away with the right of the State to take an easement under the 1947 Act, which was at least identified to the land owner in his patent, and not prohibit the taking of a concurrent easement which was not identified in the land owners patent. Indeed the premise of the Alaska Supreme Court is refuted by the BLM's own memorandum discussing these rights-of-way.

The most burdensome aspect of the highway right-of-way problem lies in the fact that the federal government mishandled the implementation of the programs. The only notice was published in the Federal Register. The Federal Register is a relatively obscure document to most people. Indeed in the late 1940's and 1950's the existence of the Federal Register, let alone the potential impact on their lives was not realized by most people. The rights-of-way were not placed of record against specific parcels and in cases where the statute or land order required that a map be made of the highway and placed of record with the BLM that was often not done. Further, over the years the State of Alaska in upgrading and improving highways has moved the location of the highway. Now it is difficult to know exactly where the highway was in the 1950's to determine how much property could be taken from the land owner without compensation.

Recently the State has aggravated the problem by permitting other activities to take place on the rights-of-way such as bike paths, horse trails, and utility lines but forced the entity

constructing this nonhighway use to place it on the far edge of the easement thus long before the road might have to actually be expanded, if at all, the easement is being utilized and the homeowner suffers from the loss of trees, shrubs, and use of his land as well as any improvements thereon.

It is this combination of factors which makes the taking by the State of Alaska unfair and inequitable. Lack of adequate notice to the original patentee, lack of notice contained in the patent, lack of notice to the general public except as published in the Federal Register, no recording of the easements in the recording district of the territory or State of Alaska, failure of the State of Alaska to record its quitclaim deed until 1969, and the belief that the 1966 Act by the Legislature ended once and for all the controversy, all contribute to make this taking without compensation extremely unfair.

It is clear that the legislative relief is required to close the loopholes created by the Alaska Supreme Court in the 1966 Act. It was unjust and inequitable then and it is unjust and inequitable now.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 141
 Title: An Act releasing claims of State land within certain rights of Sponsor: Cochill way
 Requestor: _____
 Date of Request: February 15, 1985

FISCAL DETAIL

Agency Affected: Transportation & Public Facilities
 Program Category Affected: _____
Design and Construction
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		75	75	75	75	75
200 TRAVEL		15	15	15	15	15
300 CONTRACTUAL		1,750	1,750	1,750	1,750	1,750
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES		225,500	225,500	225,500	225,500	225,500
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		227,340	227,340	227,340	227,340	227,340
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	227,340	227,340	227,340	227,340	227,340
FEDERAL FUNDS					
OTHER					
TOTAL					

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: Attach a separate page if necessary

See attached Analysis

Prepared By: Milton H. Lentz Phone: 465-2985
 Division: Standards & Technical Services HQ Date: February 14, 1985

Approved by Commissioner: *[Signature]* Date: 2/15/85
 Agency: Department of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

DOT/PF FISCAL NOTE

7/1/84



Dept. of Transportation & Public Facilities

Position Paper

BILL NO: Senate Bill No. 141
TITLE: An Act releasing claims of the State
to land within certain rights of way

APPROVED: R. J. Knapp
Commissioner

DATE: 2-15-85

The Department of Transportation and Public Facilities opposes Senate Bill 141. This bill would have a major negative impact on the State of Alaska. It could restrict our ability to serve the public effectively and create a heavy financial burden for the State. In addition, there is a concern that, if this bill is enacted into law, it will jeopardize present or future federal-aid participation in highway rights of way.

The validity of these easements has been reviewed by the U.S. Supreme Court and the passage of this bill would reverse any legal grounds already established through the judicial system.

ANALYSIS OF FISCAL NOTE FOR SENATE BILL 141

This bill would relinquish highway easements created by the federal government under several laws and land orders. Most of the highway rights of way in the State would be affected. This bill would relinquish or vacate all those rights of way except those portions which are physically occupied on the effective date of the Act. Under this Act, the adjacent landowners would immediately become owners of the affected rights of way except those portions between slopes and ditches.

The enactment of this bill would put the Department in the position of having to purchase any rights of way needed for planned expansion, maintenance (brush cutting and snow storage), protection of utility permit areas, permitted encroachments, etc.

The cost of almost all future upgrading or widening of existing highways and the building of planned highways would be increased drastically because of the expense of acquiring additional right of way. This bill would also affect federal funding on federal-aid projects. It is the Federal Highway Administration's position that there can be no federal reimbursement for funds expended by the State of Alaska for the acquisition of right of way from lands subject to the reservation contained in the 1947 Act.

This fiscal note is based on the following assumptions:

1. Primary highways normally control 300-foot rights of way in general but physically occupy 100 feet for the actual roadway.
2. Secondary highways normally control 200-foot rights of way but physically occupy 60 feet for the actual roadway.
3. The State would have to reacquire approximately one half the relinquished rights of way for planned expansion, maintenance, clear zones, utility permits, etc. This would have to be done as expeditiously as possible to satisfy maintenance agreement obligations with the federal government on federal-aid highways.



U.S. Department
of Transportation

**Federal Highway
Administration**

Alaska Division

P.O. Box 1648
Juneau, Alaska 99802

February 19, 1985

HRW-AK
013

R. J. Knapp, Commissioner
Alaska Department of Transportation
and Public Facilities
Juneau, Alaska

Dear Commissioner Knapp:

Senate Bill 141

We have reviewed Senate Bill #141 introduced in the State Senate February 8, 1985. This Bill is similar to previously introduced legislation and we will have the following concerns:

1. If the right-of-way remaining will only include the road shoulders and the ditching, several problems are envisioned. There may not be sufficient sight distance to provide for the safety of the traveling public, as you would be unable to clear vegetation on the inside of curves. You would be unable to clean ditches and maintain structures without encroaching on other properties. There would be no mechanism to prevent construction of facilities next to the traveled way.
2. It was the intent of the Federal Government in establishing Public Land Orders to provide land for highway construction at no additional expense to the states or the United States. If the State of Alaska should choose to abandon this right, and later find that this right-of-way is necessary for the construction or operation of the highway, there can be no Federal reimbursement for funds expended by the State of Alaska for reacquisition.

Sincerely yours,

Barry F. Morehead
Division Administrator

FHWA BILL ANALYSIS

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

465-3603

March 5, 1985

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Request for Opinion on SB 141
Our File: 366-380-85

Dear Mr. Call:

This letter is in response to your request for our analysis of SB 141 which has as its subject matter Public Land Orders 601, 757, 1613 and Department Order 2665.

Public Land Orders 601, 757, 1613 and Department Order 2665 are responsible for the creation of 80 percent of the public road rights-of-way in Alaska. Moreover, the legal validity of the rights-of-way and easements created by these land orders was upheld by the Alaska Supreme Court against numerous legal challenges raised by the Alaska Land Title Association in a case that went all the way up to the U.S. Supreme Court. See Alaska Land Title Association v. State of Alaska, 667 P.2d 714 (Alaska 1983), cert. denied, 104 S.Ct. 704 (1984).

The effect of SB 141 would be to require the state to vacate and relinquish to certain private landowners significant portions of public highway rights-of-way that were created by PLO 601, PLO 757, PLO 1613 and D.O. 2665. Specifically, those portions of the rights-of-way not physically occupied on the effective date of the bill would have to be relinquished by the state.

There are at least two major legal concerns raised by this bill. The first involves article IX, section 6, of the Alaska Constitution. This provision reads as follows:

Section 6. PUBLIC PURPOSE. No tax shall be levied, or appropriation of public money made, or

ATTORNEY GENERAL'S OPINION

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
366-380-85

March 5, 1985
Page 2

public property transferred, nor shall the public credit be used, except for a public purpose.

The easement rights created by PLO 601, PLO 757, PLO 1613, and D.O. 2665 are held in common by the general public. These rights, therefore, are a form of public property. The clear effect of Senate Bill 141 is to transfer this public property to certain private individuals. This is so because the bill, while relinquishing public road easements held in common by the general public, bestows the right to the fair market value of these easements upon those private landowners whose property was previously subject to them. See sections 2 and 3 of SB 141. The bill, in effect, transfers public property to private individuals who would not pay anything to the state for the value of the rights transferred to them. Such a transfer, on its face, would appear to violate the public purpose provision of the state Constitution. This is underscored by the fact that the public, if it requires the vacated road easement area for future road improvement, must purchase it back from private ownership. Only these private individuals would benefit from this arrangement and the repurchase costs would probably be significant. Thus, it is difficult to understand how this bill would not violate the public purpose requirement of article IX, section 6, of the Alaska Constitution that must be met whenever public property is transferred. 1/

A second legal difficulty concerns article 1, section 1, of the Alaska Constitution. This provision provides that all persons are entitled to equal rights under the law and, conversely, prohibits unfair distinctions between classes of persons.

1/ Because this bill would eliminate significant portions of public road easements, it would most likely have a negative effect on public access to various areas of the state. As a result, SB 141 appears to be inconsistent with article VIII, sections 1 and 2 of the Alaska Constitution. Article VIII, Section 1 states that it is the policy of the state "to encourage the settlement of its lands and development of its resources by making them available for maximum use consistent with the public interest." Article VIII, section 2 requires the legislature to "provide for the utilization, development, and conservation of all natural resources belonging to the state . . . for the maximum benefit of its people."

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
366-380-85

March 5, 1985
Page 3

See Ale v. State, 484 P.2d 677 (Alaska 1971); Leege v. Martin, 379 P.2d 447 (Alaska 1963) .

The effect of this bill is to divest the general public of its right to utilize significant portions of the public road easements created by public land orders. Since the effect of this divestment would be to eliminate the public's right to claim these public road easements, only those private individuals owning land fronting on the public roads created by these land orders would benefit from this divestment. That is to say, after the effective date of this bill, the public, acting through the state, would have to purchase from this class of individuals the right to use the same public road easements that were previously owned by the public.

In sum, as matters stand now, the public road rights granted by these land orders are owned by all members of the public in common. Should this bill become law, it would mean that the cash value of these rights, rights which were formerly held by all, would be granted to a class of property owners, i.e., those individual property owners fortunate enough to own land fronting on the very roadways created by these public land orders. Thus the practical effect of this bill is to take away potentially valuable property rights owned by the general public as a whole and bestow the right to the fair market value of these rights upon a class of private individuals. Since article I, section 1 of the Alaska Constitution adopts the principle that "all persons are equal and entitled to equal rights, opportunities, and protection under the law," the granting of special privileges by this bill to a particular class at the expense of the public may very well violate this provision.

At present, only one class of persons exists relative to the public road easements created by these public land orders. This class is made up of members of the general public who own these public road easements in common. Should this bill become law, these easement rights would, in effect, be taken from the general public. 2/ The right to the cash value of these public road easement rights would then be bestowed, not on the general

2/ This "taking" from each member of the public by itself may violate article XIII, section 16 of the Alaska Constitution which provides that "no person shall be involuntarily divested of . . . his interests in lands . . ." unless the divestment is for a public purpose and he is paid just compensation.

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
366-380-85


March 5, 1985
Page 4

public as a whole, but on a special class of property owners. This bill, in effect, would create two classes of persons: the class of all those members of the general public who do not own real property fronting on the roadways created by the public land orders and the class of those property owners who do own property fronting on the roadways created by these public land orders. This latter class would then be given the right to the fair market value of the easements previously owned by the entire public. It is likely that such discriminatory treatment is barred by article I, section 1, of the Alaska Constitution.

Sincerely,

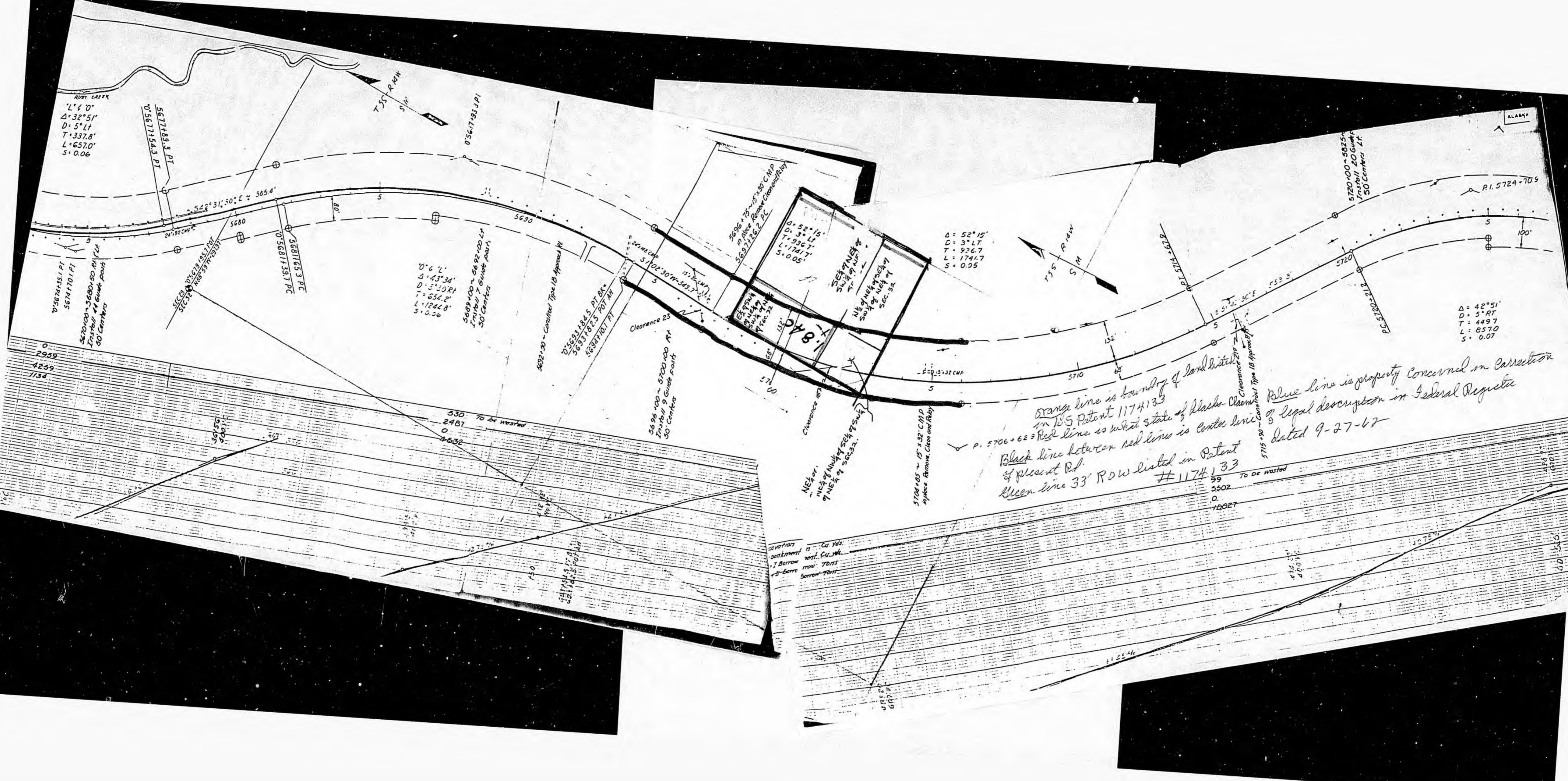
NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Jack B. McGee
Assistant Attorney General

JBM:ebc:prm

RUBY CREEK
 $L = 670'$
 $\Delta = 32^\circ 51'$
 $D = 5^\circ LT$
 $T = 337.8'$
 $L = 657.0'$
 $S = 0.06$



0	2959	
4259		
7734		
330	To be wasted	
2487		
0		
4632		
599		
5502		
0		
10027		

Orange line is boundary of land listed in US Patent 1174133
 Red line is what state of Alaska claims
 Black line between red lines is center line of present Rd.
 Blue line 33' RDW listed in Patent #1174133

Blue line is property concerned in correction of legal description in Federal Register dated 9-27-67

deviation
 bankment
 borrow
 borrow

cu. yds.
 cent. cu. yds.
 tons
 borrow tons

ALASKA

1 IN THE SENATE

BY COGHILL

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act releasing claims of the state to land within
7 certain rights-of-way; and providing for an effective
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act
11 is to release certain highway rights-of-way claimed by the state that are
12 causing economic hardship and physical and mental distress to persons who
13 hold title to land under a reservation to the state by virtue of 33 Stat.
14 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48
15 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14
16 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951);
17 Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental
18 Order 2665, 16 Fed. Reg. 10, 752 (1951).

19 * Sec. 2. RELINQUISHMENT OF RIGHT-OF-WAY. The commissioner of trans-
20 portation and public facilities shall vacate and relinquish to the adjoin-
21 ing property owners any and all rights-of-way for a road, roadway, highway,
22 tramway, trail, bridge, or appurtenant structure created, withdrawn or
23 reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of
24 June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public
25 Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed.
26 Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378
27 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) if the
28 right-of-way on the effective date of this Act is not physically occupied
29 by a road, roadway, highway, tramway, trail, bridge, or appurtenant

1 structure.

2 * Sec. 3. TAKING OF RIGHT-OF-WAY WITHOUT JUST COMPENSATION VOID. The
3 vacated and relinquished right-of-way under sec. 2 of this Act may not be
4 taken, claimed, asserted, or used by the state without the payment of just
5 compensation.

6 * Sec. 4. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of
7 this Act do not divest the state of its interest in a right-of-way to land
8 or require compensation by the state for land physically occupied on the
9 effective date of this Act by a road, roadway, highway, tramway, trail,
10 bridge, or appurtenant structure then constructed within the right-of-way
11 created, withdrawn, or reserved under the Acts of Congress and the orders
12 described in sec. 2 of this Act; nor do the provisions of this Act divest
13 the state of an interest in an easement of specific width set out in the
14 original patent from the state or federal government.

15 (b) Expansion beyond an existing road, roadway, highway, tramway,
16 trail, bridge, or appurtenant structure requires the payment of just com-
17 pensation to the owner of the land and no other acts or actions by the
18 state constitute a physical occupation within the meaning of this section.
19 The state has the burden of proof to show by clear and convincing evidence
20 that the physical occupation occurred before the effective date of this
21 Act.

22 * Sec. 5. APPLICATION TO FEDERAL LAND. The provisions of this Act do
23 not divest the state of its interest in a right-of-way that affects land in
24 which fee title is, on the effective date of this Act, vested in the United
25 States of America.

26 * Sec. 6. DEFINITION. As used in this Act, "physically occupied" means
27 the construction of the actual roadway, including its shoulders and ditch-
28 ing, highway, tramway, trail, bridge, or appurtenant structures, before the
29 effective date of this Act.

1 * Sec. 7. RETROACTIVE APPLICATION. This Act does not relieve, alter,
2 or void a voluntary conveyance of an easement including an easement dedi-
3 cated by plat.

4 * Sec. 8. EFFECTIVE DATE. This Act takes effect immediately in accor-
5 dance with AS 01.10.070(c).
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TAKING OF RIGHTS-OF-WAY WITHOUT COMPENSATION

In recent years there has been a tremendous amount of road construction by the State of Alaska to serve the needs of the State's growing population and economic development. An important part of building new roads and expanding old ones is establishing the right-of-way upon which the road can be constructed. In the Lower 48 and, to some extent in Alaska, when a state wishes to construct a road it purchases the right-of-way across private land either by direct negotiation or by condemnation. Thus, a private land owner whose property is effected by a highway is compensated for the loss of the use of his property.

This is not so for a large number of land owners in Alaska. The State of Alaska has determined that it can take rights-of-way and expand existing roads over private property without compensation to the land owners based upon some obscure federal regulations and statutes, despite the fact the Alaska State Legislature has already made one attempt to prohibit such takings.

In order to understand how the State can claim an easement or right-of-way for highway purposes across private land without paying compensation one must look at the history of road development in Alaska. Prior to 1947, there were two primary ways by which roads could be established. The first was by appropriation. Under the doctrine of appropriation, if the federal government wished to build a road, it could do so on public lands simply by expending money for the construction of the road. As a matter of custom the width of such roads was generally 33 feet either side of the center line.

Roads were also established prior to 1947 under a special federal statute (48 U.S.C. §932) which granted the right to the public to construct highways across vacant and unappropriated federal public lands. Several territorial enactments established a right-of-way along all section lines in the state four rods (66 feet) wide.

Following World War II numerous veterans found Alaska an appealing place to live and migrated to our state, These Homesteaders soon had identified parcels for entry and proceeded to lawfully obtain title to these lands. The Department of Interior which was responsible for the construction of most roads in Alaska through the Alaska Road Commission soon discovered that

its road construction could not keep up with the pace of settlement. Homesteaders would often enter the property before the Alaska Road Commission could build a road by appropriation. Once the homesteader entered the property the right to build a road by appropriation was lost since the property was no longer considered public lands.

To remedy this problem, Congress passed a law in 1947 requiring a general reservation for highway rights-of-way be placed in all patents where the homesteader entered after July 24, 1947. It was envisioned that as the Alaska road network developed in the territory, the Alaska Road Commission could then construct a road across the patented property even though it was no longer in the hands of the federal government.

Unfortunately, the 1947 law did not establish where the roads were or their width. This placed the homesteader at risk, that, at any time in the future, a road could be constructed across his property. In 1949 the Department of Interior attempted to clarify this problem by publishing Public Land Order No. 601 which established the width for various types of roads in Alaska. The Public Land Order withdrew from the public domain strips of land along all highways in Alaska. By withdrawing the strips of land the federal government actually made those portions of federal public lands unavailable for homesteading.

PLO 601 established several classifications of roads. For through roads such as the Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, and Tok Cutoff, the right-of-way was 150 feet either side of center line or 300 feet total. For feeder roads such as the Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Porter-Indian Road, etc. the rights-of-way was 100 feet either side of center line or 200 feet total. The last classification was entitled local roads and represented a withdrawal of 50 feet either side of center line or 100 feet total. However, unlike the through roads and feeder roads, local roads were not specifically identified by name.

The problem with PLO 601 was that homesteaders who entered their property after August of 1949 were often not told that their property might be effected by PLO 601.

The BLM was required, because of the withdrawal by PLO 601, to survey those withdrawals and to post them to their plats. Additionally they were required to tell a homesteader who entered the property and who claimed land under his application which was effected by the PLO 601 that his homestead could not include those lands which PLO 601 effected. The BLM did neither. The

cost and manpower involved in identifying and surveying the property effected by the Public Land Orders and posting it to the plats was beyond the physical and fiscal capability of the BLM in the late 40's and early 50's.

As a result of local BLM protest to Washington the Department of Interior recognized the difficulties inherent in the withdrawals under PLO 601. In 1951 therefore they published PLO 757 which ended the withdrawals as to local and feeder roads and simultaneously published Department Order 2665 which converted those withdrawals to easements. Therefore, a homesteader who entered the property after D. O. 2665 could claim up to the center line of a local or feeder road but would take subject to an easement in favor of the federal government. But, as had happened when PLO 601 was in effect, many homesteaders were not informed of the full nature of the federal government's interest in their property. Some homesteaders had the existence of the local or feeder road easement noted in their prepatented documents but many did not. The easement was never noted in the patent that was issued to them.

The last difficulty associated with these rights-of-way was that the withdrawal that had remained in effect as to through roads. Congress in the late 1950's decided to sell the withdrawn land to the adjoining land owners and convert the remaining through road withdrawals to easements. The Department of Interior published Public Land Order 1613 which converted the withdrawals to easements and the underlying fee was to be sold to the then current adjoining land owner.

The Department of Interior did not immediately institute the program because of Statehood in 1959. During the transition phase much of the federal responsibility for highways and highway rights-of-way passed to the State of Alaska. The State claims its interest to the rights-of-way pursuant to a quitclaim deed issued by the Federal Government in 1959. The State did not bother to record the quitclaim deed until 1969. Thus, there was no document of record in a recording district by which the State claimed any title. The United States government had also never placed the easements of record in the territorial commissioner's office (the predecessor to recorders office).

In the mid 1960's the Bureau of Land Management once again rediscovered its obligations under PLO 1613 to convey the land to the adjoining land owner. It sent out to many of the adjoining land owners notices that they had the right to purchase the underlying fee to the highway along their property. Some of the adjoining land owners paid the purchase price. However, because

of the general freeze on the conveyancing of federal lands in Alaska the federal government failed to issue patents to those individuals.

In the last two years the BLM has once again discovered its obligations under PLO 1613 and have now made the property available to the adjoining land owners, but at today's prices. Further, where the 1965 adjoining land owner had filed an application to purchase and paid his purchase price in 1965, the BLM will now issue the patent to him and not the current adjacent land owner. This causes a great concern among current land owners who believed that they owned the property in front of their homes and businesses. It is conceivable that not only will they have an interloper between themselves and the highway but perhaps even a loss of access to their property.

In 1966, the Alaska legislature became aware that the State was building certain roads along these federally created highway rights-of-way without paying compensation. The only land owners which were effected by this unfair taking were those who entered the property after July of 1947 and before statehood. All other Alaskans were entitled to compensation if such a taking occurred on their property.

Representative Hillstrand brought the issue before the Alaska legislature and they virtually unanimously agreed that such a taking was unfair and unjust to the land owners. The legislature in 1966 therefore passed the Right-of-Way Act of 1966 which barred the state from taking any further land under the grants by the federal government. Between 1966 and 1970 the State therefore paid citizens in Alaska for highway construction and expansion on their lands. Indeed, in 1970 the commissioner for the Department of Transportation testified before the United States Congress that the State had paid several million dollars to land owners in compensation for the federal rights-of-way which had been created in the 1940's and 50's.

In the early 1970's however the problem re-emerged. The rapid increase in the population of Alaska and development of its economy required the State to build additional roads and to expand existing roads to accommodate the growth. In the mid 1970's the State once again began to take property under the 1947 Act. When confronted with the 1966 Act which barred the State from taking property without compensation, the State came up with a legal theory circumventing the Act. In the late 1970's and early 1980's several cases went to the Alaska Supreme Court concerning whether the State had a highway right-of-way across private land which it could take without compensation. In each

of those cases the trial court after having heard the evidence and arguments by the State and land owners ruled in favor of the land owners. In each case the Alaska Supreme Court reversed.

The Alaska Supreme Court's reversal rests on two weak premises. First, that the Alaska legislature in 1966 intended only to end those easements under the 1947 act. The Court's second premise was that the 1947 Act was an independent statute and did not modify the prior act authorizing the Secretary of Interior to build roads in Alaska. The Court found that that prior legislation which authorized the Secretary of Interior to build highways in Alaska permitted him to also create easements independent of the fact that Congress in 1947 modified the law to require that those easements be placed in the patent. Since Department Order 2665 states that it is promulgated under the Department of Interior's responsibility to construct roads in Alaska Department Order 2665 survives the 1966 Act and is not affected by it.

The position of the Alaska Supreme Court seems incredible. It is difficult to believe that in 1966 the Alaska Legislature was only doing away with the right of the State to take an easement under the 1947 Act, which was at least identified to the land owner in his patent, and not prohibit the taking of a concurrent easement which was not identified in the land owners patent. Indeed the premise of the Alaska Supreme Court is refuted by the BLM's own memorandum discussing these rights-of-way.

The most burdensome aspect of the highway right-of-way problem lies in the fact that the federal government mishandled the implementation of the programs. The only notice was published in the Federal Register. The Federal Register is a relatively obscure document to most people. Indeed in the late 1940's and 1950's the existence of the Federal Register, let alone the potential impact on their lives was not realized by most people. The rights-of-way were not placed of record against specific parcels and in cases where the statute or land order required that a map be made of the highway and placed of record with the BLM that was often not done. Further, over the years the State of Alaska in upgrading and improving highways has moved the location of the highway. Now it is difficult to know exactly where the highway was in the 1950's to determine how much property could be taken from the land owner without compensation.

Recently the State has aggravated the problem by permitting other activities to take place on the rights-of-way such as bike paths, horse trails, and utility lines but forced the entity

constructing this nonhighway use to place it on the far edge of the easement thus long before the road might have to actually be expanded, if at all, the easement is being utilized and the homeowner suffers from the loss of trees, shrubs, and use of his land as well as any improvements thereon.

It is this combination of factors which makes the taking by the State of Alaska unfair and inequitable. Lack of adequate notice to the original patentee, lack of notice contained in the patent, lack of notice to the general public except as published in the Federal Register, no recording of the easements in the recording district of the territory or State of Alaska, failure of the State of Alaska to record its quitclaim deed until 1969, and the belief that the 1966 Act by the Legislature ended once and for all the controversy, all contribute to make this taking without compensation extremely unfair.

It is clear that the legislative relief is required to close the loopholes created by the Alaska Supreme Court in the 1966 Act. It was unjust and inequitable then and it is unjust and inequitable now.



U.S. Department
of Transportation

Federal Highway
Administration

Alaska Division

P.O. Box 1648
Juneau, Alaska 99802

March 8, 1985

HDA-AK
013

R. J. Knapp, Commissioner
Alaska Department of Transportation
and Public Facilities
Juneau, Alaska

Dear Commissioner Knapp:

Senate Bill 141

The enclosed is a paper Gary Wilson did for me explaining the differences in 1947 Act easements and Public Land Order (PLO) easements. Since the 1947 Act easements in essence no longer exist I think it would be helpful to all of us if discussions, including examples, only referred to PLO easements.

Our office would certainly be willing to work with you in resolving this issue. The resolution would seem to tie in with your plan to develop an immediate, intermediate, and long term program of proposed improvement projects. Once this is done you could determine which of the proposed improvements involve PLO easements. We could then agree to the number of lanes needed, and a typical section, including shoulders and ditches; plus any additional areas needed to maintain your roadway. Lands beyond what we agree are needed could then be unencumbered by PLO easements.

The mechanics of how this could be recorded needs to be explored. For instance, could the right-of-way lines be established from areial photography and mathematical calculations? Would something like this be recordable? If so, this could be done rather quickly. However, if a physical survey is needed I can see this resolution would be quite costly and time consuming.

If at some later date it was determined lands outside our agreed to right-of-way limits were needed for a roadway improvement, we would participate in the acquisition even though it may be lands previously included in Public Land Orders.

Sincerely yours,

Barry F. Morehead
Division Administrator

COPY

Enclosure

FHWA PLO ANALYSIS



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: Senate Bill 141

Date: March 7, 1985

From: Division Right-of-Way Officer
Juneau, Alaska

Reply to
Attn. of: HRW-AK
013

To: Mr. Barry F. Morehead
Division Administrator
Federal Highway Administration
Alaska Division
Juneau, Alaska

The testimony and material presented at the Senate Committee hearing on March 6, 1985 confused Public Land Order (PLO) right-of-way with "47 Act" right-of-way. The pertinent differences that were not explained are:

- "47 Act":
1. Was established by an Act of Congress effective 7/24/47 and codified into 48 USC, Section 321.d. It reserved from subsequent lands patented, a right-of-way. The right-of-way was available to the United States or any state created out of the Territory of Alaska.
 2. It was repealed by Public Law 86-70, the Alaska Omnibus Act, effective July 1, 1959, however, the reservation contained in patents issued between 1947 and 1959 remained valid.
 3. It was specifically noted in patents issued between 1947 and 1959.
 4. Specific areas or locations were not identified in the patents.
 5. The State of Alaska relinquished their right to any unutilized reservations by the Alaska Right-of-Way Act of 1966.
 6. The Federal Government relinquished their right to any unutilized reservations by Section 138 of the Federal-aid Highway Act of 1970.

PLO: 1. Established a withdrawal from Public domain which was subsequently changed to an easement and established and/or revised corridor widths by:

Executive Order 9145 dated 4/23/42.
PLO 12 dated 7/20/42
PLO 84 dated 1/28/43
PLO 270 dated 4/5/45
PLO 386 dated 7/31/47
PLO 601 dated 8/10/49
PLO 757 dated 10/16/51
Secretarial Order 2665 dated 10/16/51
Amendment #1 to 2665 dated 7/17/52
Amendment #2 to 2665 dated 9/15/56
PLO 1613 dated 4/7/58

The above were issued by the Executive Branch rather than the Congress.

2. They established the original corridor for the Alaska and Glenn Highways. They withdrew from Public Domain a specific width corridor along existing highways. They changed the withdrawals to easements.
3. The withdrawals or easements were not identified in patents issued by the Federal Government nor were they recorded.
4. The withdrawals or easements were not affected by the Alaska Right-of-Way Act of 1966 or Section 138 of the Federal-Aid Highway Act of 1970. The hearings and introductory remarks pertaining to these pieces of legislation always referred to 48 USC, Section 321d or the "47 Act" with no mention of Public Lands Orders.

In summary, the "47 Act" reserved an area from the land patented but did not identify where it was. The PLO's created an easement over the land and located it by designating the highway name and corridor width.

The question of payments and reimbursement was raised but not sufficiently answered.

Prior to 1966:

the State of Alaska did not pay for land utilized under provisions of the "47 Act" or within the PLO corridors. Since there was no expense, there was no federal-aid reimbursement.

Mr. Morehead

-3-

March 7, 1985

From 1966 to 1970:

the State of Alaska paid fair market value for right-of-way covered by the "47 Act" but there was no federal-aid reimbursement for these expenses (see attached listing of parcels and amounts expended prior to 5/1/67).

The State of Alaska did not pay for land within the PLO corridors.

From 1970 to the present

the State of Alaska has paid fair market value for right-of-way covered by "47 Act" and federal-aid funds have participated in the expense.

The State of Alaska has not paid for land within the PLO corridors.



Gary E. Wilson

Attachment

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES	
S-0461(1) <i>Ninilchik</i>	10	X		\$ 2,300.00		
	16	X		625.00		
	4	X		65.00		
S-0490(2) <i>North Kenei Road</i>	30		X	176.40		
	12		X	205.83		
	15		X	206.25		
	17		X	165.00		
	20		X	206.25		
	32		X	139.65	\$1,800.00	
	24		X	173.25		
	72L	X		2,226.00	1,000.00	
	11			X	165.53	
	18			X	247.50	
	23			X	123.25	
	34			X	147.50	66.53
	4	X			772.87	
	9			X	209.10	
	10			X	208.00	
	13			X	165.00	
	14			X	206.25	
	16			X	247.50	
	19			X	206.25	
	21			X	173.25	
	22			X	173.25	
	25			X	173.25	
	26			X	151.80	
	27			X	151.80	
	28			X	173.25	
	29			X	174.30	
	31			X	139.65	
	33			X	200.40	
	70	X			1,898.20	
	70C	X			825.00	
	70D	X			127.60	
	72	X			7,384.50	
	62			X	2,225.00	
63	X			3,000.00		
63A	X			132.00		
63B	X			75.00		
66	X			2,350.00		
69	X			3,038.00	229.00	
70A	X			1,125.00		
70B	X			800.00		
72B	X			70.00		
72E	X			240.00		
72H	X			459.00	177.00	
72J	X			740.00	230.00	

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
S-0490 (2)	72M	X		\$1,042.50	\$ 500.00
	72G	X		330.00	
	72N	X		341.00	
	72K	X		330.00	
	72A	X		975.00	
	65	X		1,682.00	
	72F	X		354.00	
	72D	X		1,050.00	
	59	X		650.00	
	67	X		150.00	
S-0501 (1) <i>Girdwood - Alyeska</i>	30		X	1,250.00	
	7		X	137.84	
	15		X	193.42	
	17		X	195.05	
	26		X	368.47	
	14		X	194.23	
	21		X	255.80	
	6		X	289.70	
	16		X	195.86	
	23		X	239.89	
	24		X	276.85	
S-0512 (2) <i>O'Malley Road</i>	1109		X	629.75	
	1067		X	755.70	
	1110		X	2,516.33	
	1111		X	755.70	
	1114		X	629.75	
	1402		X	629.75	
	1120		X	7,000.00	
S-0547 (6) <i>Lake Otis Road (Tudor to Dowling)</i>	16		X	1,222.84	4,980.96
	17		X	1,023.56	
	10		X	586.73	
	22		X	6,263.75	
	4	X		34.50	
	9		X	925.65	
	11		X	806.70	
	12		X	648.00	
	14		X	970.00	
	15		X	562.50	
	19		X	1,056.00	
S-0520 (8) <i>Diamond Blvd (Jewel Lake West)</i>	5A	X		475.00	
	5B	X		790.00	
	20	X		1,700.00	
	5	X		1,500.00	
	5C	X		545.00	
	5D	X		1,625.00	
	8	X		1,100.00	
	10		X	1,450.00	
	4	X		875.00	
	7		X	650.00	

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
S-0549(1) <i>Abbot Road</i> <i>(4 Miles South of Anchorage)</i>	12		X	\$ 276.00	
	13		X	296.22	
	14		X	296.22	
	15		X	265.88	
	16		X	265.88	
	17		X	296.22	
	18		X	296.22	
	19		X	463.59	
	S-0959(1) <i>North Douglas Highway</i>	12		X	33.43
15			X	40.80	
16A			X	41.15	
17A			X	29.48	
20A			X	570.06	
21			X	223.52	
22			X	186.00	
23			X	165.76	
28			X	56.65	
29			X	54.79	
S-0970(2) <i>Fritz Cove Road (Tuneeu)</i>		6		X	116.76
	7		X	275.04	
	9		X	1,342.00	
	10		X	2,044.50	
	15		X	16.63	
	17		X	32.55	
	18		X	26.39	
	22		X	1,252.80	
	23		X	1,037.70	
	24		X	494.96	
	24A		X	186.90	
28		X	1,276.92		
F-021-1(3)	096	X		1,623.65	
<i>Ukiatik to Soldatua</i>					
F-021-1(14) <i>Homer Streets & Homer Spit</i>	6		X	1,323.00	
	7		X	652.40	
	8		X	652.40	
	9		X	1,401.00	
	22		X	320.00	
	23		X	3,431.00	
	25		X	5,813.00	
	27		X	3,440.98	
	28		X	1,197.70	
	20		X	2,070.00	
	21		X	241.00	
	20A		X	35.00	
	17		X	2,314.00	
	18A		X	384.00	
26 & 27A		X	1,128.57		

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
F-062-4(11)	29	X			
Shaw Creek	31	X		\$966.85	
Eielson AFB	28		X	765.50	
(Fairbanks)	30		X	903.87	
	32		X	440.00	
	33		X	529.65	
F-095-8(5)	13	X		701.80	
Tuncum Outer Drive					5,252.00

1947 act land \$54,681.17

Small Tracts \$85,402.16

54,681.17

Total to May 1, 1967 \$140,083.33

PERCENTAGE OF AREA SUBJECT TO PLO TAKINGS WITHOUT
COMPENSATION.

Due to the existing Alaska Supreme Court cases indicating that land homesteaded after August 10, 1949 may have the easements taken without compensation, the following are best guess estimates of land in the following areas that would be subject to taking without compensation:

Anchorage - 60%-75%

Kenai - 90%

Fairbanks - 5%-10%

Juneau - 5%-10%

As you can see in the Anchorage and Kenai areas, this means that the majority of the land bordering these roads may be taken without any compensation whatsoever.

% EFFECTED LAND

OWNERS V. MORTGAGEE'S TITLE INSURANCE POLICY

A point was made at the Hearing 3-6-85 for Senate Bill 141 that banks required insurance policies on most of the urban transactions. However, there is a basic distinction between an owner's policy and a bank's policy known as a mortgagee's policy. The owner's policy insures title to be in the name of the fee owner of the property, e.g. John Smith. The mortgagee's policy does not insure title is held in any particular person, but only insures that the mortgage to the bank has a certain priority as to other recorded instruments. Many times an owner pays for a mortgagee's policy, but does not pay for an owner's policy whereby he is not insured and in fact if loss occurs to the lending institute, the title insurance company may sue the owner under the doctrine of subrogation to recover any losses. Often times, a mortgagee's policy is the only one acquired and that owner's go uninsured as to their property. This is especially true in more rural areas.

TITLE INSURANCE



STATE OF ALASKA
OFFICE OF THE GOVERNOR

Nov 2 11 15 AM '84

November 19, 1984

Joe
ALTA / W. L. ...

RECEIVED
MAR 7 1985

GROH, EGGERS & PRICE

The Honorable Frank Murkowski
United States Senate
317 Hart Building
Washington, DC 20510

Dear Frank:

I have been informed that representatives of the Alaska Land Title Association (ALTA) may ask you to consider introducing legislation concerning highway easements created by public land orders and department orders issued by the Department of Interior from 1943 through 1958. I am writing to let you know of our strong opposition to such legislation, for the reasons detailed below.

The central issue is whether existing State and federal statutes limit the State's right to utilize public road easements granted by particular public land orders and department orders. The Alaska Supreme Court has clearly disagreed with ALTA's view that existing laws (the Alaska Right-of-Way Act of 1966 and AS 34.15.290) prohibit the State from utilizing the powers granted in Public Land Order 601 and Department Order 2665 to expand or widen public roads. In January 1984, the U.S. Supreme Court denied ALTA's request to review the Alaska Supreme Court decision.

With statehood, the road powers originally granted by a series of Department of Interior public land orders and department orders were transferred to the State. In 1966, the Alaska Legislature limited those powers. The Alaska Legislature has recently considered legislation further limiting those powers but has not acted on it to date. We believe that federal legislation in this area would be an unwarranted intrusion into matters best addressed, if necessary, at the State level.

The Alaska Department of Transportation and Public Facilities estimates that the total monetary impact to the State's road program could ultimately reach several hundred million dollars if the ALTA proposal were enacted.

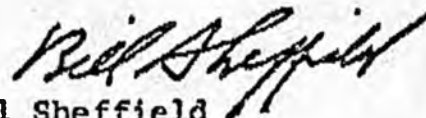
GOVERNOR'S LETTER

Property owners purchase title insurance precisely to protect themselves from the problems presented by the present situation. To enact legislation absolving the title industry of its responsibilities for this issue would simply shift the costs that the private entity has agreed to bear by contract on to the public.

The Alaska Supreme Court's decision in this matter also determined that the publication of the Department of the Interior orders in the Federal Register provided proper notice and that the title industry should have been cognizant of the effect of the orders. It should be noted that title companies now exempt these rights-of-way from their insurance policies. Consequently, they have already taken steps to limit their contractual liability.

I appreciate your consideration of our views. Please let me know if you have any questions or comments.

Sincerely,



Bill Sheffield
Governor

cc: The Honorable Ted Stevens
United States Senator

The Honorable Don Young
United States Representative

The Honorable Norman Gorsuch
Attorney General

The Honorable Richard Knapp
Commissioner
Department of Transportation
and Public Facilities

Mr. John W. Katz
Director, Washington D.C. Office

FEDERAL ACT OF 1947

418

PUBLIC LAWS—CHS. 313-315—JULY 24, 1947

[61 STAT.]

[CHAPTER 313]

AN ACT

July 24, 1947
[H. R. 1554]
[Public Law 229]

To amend the Act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932.

Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932 (47 Stat. 446), is hereby amended by adding at the end thereof the following new section:

48 U. S. C. §§ 321a-327.

Reservation of right-of-way for roads, etc.

"SEC. 5. In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of this Act is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value."

Payment for value of crops, etc.

Approved July 24, 1947.

FEDERAL AID HIGHWAY ACT - 1970

ALASKAN ASSISTANCE

Sec. 138. (a) Subsection (b) of section 7 of the Federal Aid Highway Act of 1966 is amended to read as follows:

"(b) There is hereby authorized to be appropriated for construction of Federal-aid highways of the State of Alaska, out of the Highway Trust Fund and in addition to funds otherwise made available to the State of Alaska under title 23, United States Code, \$20,-

43. 23 U.S.C.A. § 307(b).

44. 23 U.S.C.A. § 506.

2028

000,000 for each of the fiscal years ending June 30, 1972 and June 30, 1973."

(b) Any right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures reserved by section 321 (d) of title 48, United States Code (61 Stat. 418, 1947), not utilized by the United States or by the State or territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reservation shall merge with the fee and be forever extinguished.

FEDERAL ACTS OF 1947 & 1970

HIGHWAY RIGHT-OF-WAY

- I. Alaska Highway

- II. Through Roads
 - a. Richardson Highway
 - b. Glenn Highway
 - c. Haines Highway
 - d. Seward-Anchorage Highway (exclusive of that part thereof within boundaries of the Chugach National Forest)
 - e. Anchorage-Lake Spenard Highway
 - f. Fairbanks-College Highway

- III. Feeder Roads
 - a. Abbott Road
 - b. Taylor Highway
 - c. Palmer-Matanuska-Wasilla-Knik Road
 - d. Glenn Highway Junction-Fishhook Junction-Wasilla-Knik Road
 - e. Slara-Nebsana Road
 - f. University-Ester Road
 - g. Kenai Junction-Kenai Road
 - h. Manley Hot Springs-Eureka Road
 - i. Paxon-McKinley Park Road
 - j. Iditarod-Flat Road
 - k. North Park Boundary-Kantishna Road
 - l. Nome-Council Road
 - m. Seward Peninsula-Tram Road
 - n. Northway Junction-Airport Road
 - o. Palmer-Finger Lake-Wasilla Road
 - p. Central-Circle Hot Springs-Portage Creek Road
 - q. Sterling Landing-Ophir Road
 - r. Dillingham-Wood River Road
 - s. Nome-Bessie Road

- IV. Local Roads (unidentified by name; 50 feet either side of center line right-of-way)

LIST OF
THROUGH & FEEDER ROADS

197,376

110005

Form 4-1918
Sept. 1942

Anchorage 073311

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, 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), the claim of Vernon Lerne Lofstedt has been established and that the requirements of law pertaining to the claim have been met, for the following-described land:

Seventh Meridian, Alaska.

T. 12 N., R. 3 W.,

Sec. 33, Lot 191.

The area described contains 2.50 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management: Reentrant Resurvey officially filed April 14, 1952.

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. 915), 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 21, 1917 (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 33 feet in width for roadway and public utilities purposes, to be located along the south and east boundaries of said land.

Notwithstanding unto the United States, its permitted or license, the right to enter upon, occupy and use, any part or all of said lands for the purposes provided in the act of June 30, 1920, (41 Stat. 1265) and subject to the conditions and limitations of Section 21 of said act, as amended by the Act of August 26, 1955 (69 Stat. 342).

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 FOURTH day of OCTOBER in the year of our Lord one thousand nine hundred and FIFTY-FIVE and of the Independence of the United States the one hundred and EIGHTIETH.

For the Director, Bureau of Land Management.

By Rose M. Beall
Acting Chief, Patents Section

Patent Number 1151792

ALASKA DISTRICT, ANCHORAGE, ALASKA

4/3 5 29
JAN 3 1956
FILED FOR RECORD
DISTRICT CLERK
Wm. J. Gustafson

1955 PATENT WITH 33' RIGHT-OF-WAY
AND R.O.W. FROM 1947 FEDERAL ACT

SI 11321

The United States of America, 187 10

See all to whom these presents shall come. Dattling:

UNITED STATES PATENT OFFICE

Washington

Know all men by these presents, that I, JOHN HENRY SHART, do hereby certify that the following is a true and correct copy of the original of the said patent, as the same appears from the records of the Patent Office, and that the requirements of the provisions of the Act of Congress of May 20, 1862, and all acts supplemental thereto, have been complied with in the preparation of the foregoing copy.

That the said patent is for an improvement in the method of producing lead

has been established

JOHN HENRY SHART
Served Meridian, Alaska

No. 12, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

That the said patent is for an improvement in the method of producing lead

NO. 1,114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

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IN TESTIMONY WHEREOF, the undersigned officer of the Bureau of Land Management, in accordance with section 1 of the act of May 20, 1862, and section 1176, 41 U. S. C. sec. 170, has hereunto set his hand and the seal of the Bureau in the presence of the witnesses whose names are subscribed to the foregoing certificate.

RECORD OF PATENT'S Patent Number 1136555

1952 BIRCH ROAD PATENT

← (3).
1947 R.O.W.

