

MEMORANDUM

State of Alaska

WMM

TO: Ed Marvick, Chief  
Alex Miller, D-J Coordinator  
Juneau, Alaska

FROM: Ed Crower, Ed  
Anchorage, Alaska

DATE : December 21, 1960

SUBJECT: Anke Creek Highway R.O.W.

Reference memo dated 19 December 1960, concerning approach to Anke Creek situation, have developed another approach beyond that of EHM jurisdiction.

This procedure is the legal dedication of non-patented lands to public highway use.

A. Authority: ..... "the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted" ..  
..... (43 U.S.C. 932).

B. Procedure of Dedication:

1. Prepare instrument and plat there in Juneau State recorders office.
2. Ship a verified copy of the instrument after recorded, showing recorders return to Regional Solicitor, EHM, Dept. of Interior, Anchorage, Alaska. Also include copy of plat. Do not send original, or they may be lost.
3. Request the Solicitor to forward instrument and plat (copy) to proper EHM office with instructions as to its priority as a right-of-way over other administrative actions.

C. Discussion of Pertinent Points:

1. Grant: "This section is an unequivocal grant of authority over public lands, without any limitation as to the nature of their establishment (17 U.S.C. 104)."
 

The grant to Alaska is a grant "in presenti", and after being accepted on admission as a state, it took effect immediately.
2. Effect of Grant: "... the grant covers the land from the domain. After an entry and appropriation under provisions of 43 U.S.C. 932, the way so appropriated cannot be a portion of the public domain (1 Colo. App. 74, 21 P. 342)."
3. Public Land Order: "... a public land order is issued withdrawing lands for public interest. In the case at hand, the land has not yet been designated for withdrawal action, so our R.O.W. will take precedence over any such action.
4. If you may have noticed, the enclosed plat includes provisions for showing water rights R.O.W. to U.S.F.W.S. in case they cannot use this right to "low-back" on an..."
5. Although this is a public highway R.O.W. dedication, I have included a article of EHM's R.O.W. to further indicate our future management intentions. This is to remove fears of the local sportsmen and lake-side residents.



**D. Recommendations:** Suggest we proceed in this manner under above congressional law.

The only two other methods of gaining state title, lake use and control, would be;

- (1) Protest case long enough to require judgement of the case exercised by the Secretary of the Interior.
- (2) Declare the area, by application, as a Federal Power Site. This is not a good procedure.

Another interesting note in regards to this whole problem is that U.S.F.W.S. **MUST CONSULT** with ADF&G before they can divest any water from this stream.

".....whenever the waters of any stream or other body of water are proposed or authorized to .... divested .....  
....otherwise controlled or modified for any purpose whatever, .....  
by any dept. or agency of the United States....., such department -  
or agency first **SHALL** consult ....., and with the head  
of the agency exercising administration over the Wildlife resources  
of the particular State .....(Fish and Wildlife Coordination  
Act, Act of Aug. 12, 1958; 16 U.S.C. 661 et. seq.)

Ed

EJC:lc