M. Lilly
Copy to Bev
Original to me

United States Senate

MEMORANDUM

SENATOR: 11/12/82

Regarding the 3(e) issue, I have spoken to Horn. He is willing to press forward with 3(e) and claims it would take about 1 year.

Transportation has requested that Horn hold up processing 3(e) until we have resolved the transfer issue. The Governor's people have made a similar request of me. I feel there are 2 approaches to this decision.

1) The argument for expediting the process is that it will allow for final determination of R.R. land status and remove a prime argument from the state legislature.

2) The argument against is- a) The pressure is off the Natives to support any transfer bill if 3(e) is taken care of, and b) 3(e) adjudication will drag on much longer than 1 year if there are appeals (- which there certainly will be). Finally, existing regulations are quite loose and provide no assurance that we will get exactly what we seek. Horn says we will lose roughly 4200 acres, 1700 to Eklutna. There is no legal guarantee that the State will have any say in the process.

Bill and I feel that our best approach is to hold off until we pass the bill which would provide guidance to Interior and allow the state into the adjudication. Attached is a draft of the letter Horn sent Kertulla.

Mark S.

— Horn - go on (3(e)). —
Bill Phillips

S1500

DRAFT
8/13/82

To: Carol Dennis
Interior Branch
Jan Fox

From: William P. Horn
Deputy Under Secretary

Subject: Alaska Railroad Legislation

This is in response to your request for the Deprtment's position on ten issues raised by S. 1500 and section 507 of H.R. 6308, two bills dealing with the transfer of the Alaska Railroad to the State of Alaska.

SUMMARY

In summary, we recommend that operating rights to the railroad be transferred to the State immediately upon enactment of the legislation, or as soon thereafter as the Department of Transportation (DOT) can reach an agreement with the State as to what is necessary to enable the State to run the railroad. Subsequently, the Federal Government can begin the process of conveying to the State, Natives and other parties lands that have gone through the negotation or adjudication process described below. As the status of individual tracts is resolved, title can then be conveyed by patent; by this process, the United States can assure the quality of title conveyed. (The courts give great deference to Federal patents, but no deference or presumption is given to quitclaim deeds.) We believe that surveys can be in adjudication, surveyed patent can be in place in not less than 3 years. We would suggest a two-track process for settling title issues and resolving Native claims. Under this concept, both negotiations and the section 3(e) adjudication process would begin at the same time, under a 3-year time limitation. Several incentives could be built into this process, to insure that a final decision is reached by the end of this period and lengthy appeals are not filed. For example, the legislation could provide that:

- if both processes fail and no agreement has been reached, the Secretary of Interior or Transportation or the Attorney General would make a final determination on the remaining tracts, and that decision would not be appealable; or
- no judgment would be paid on successful appeals from the two-track process unless and until Congress authorizes and appropriates the necessary funds; or
- appeals from the negotiation/adjudication process could be prosecuted on a contingency fee basis, perhaps with the additional provision that --
  - the losing party(ies) pay(s) the winning party's legal fees and costs, or
  - attorney fees be paid only when Congress authorizes and appropriates the funds.

This approach recognizes that protracted litigation is both costly and contrary to the best interests of the Natives and other parties in interest. It also would insure the avoidance of delays and potential liability of the United States, arising out of conveyances of more than the United States owns.

Our specific comments on the issues raised in your August 2 memorandum are discussed below.

A. NO-COST TRANSFER

It has been suggested that the United States should not convey the railroad to the State of Alaska without requiring compensation in the form of cash or land from the State. Otherwise, it is argued, the Federal Government is giving away a valuable public resource at no cost to the State.

We would simply make two observations. First, the United States currently spends significant funds annually to operate and maintain the railroad; the State of Alaska would acquire this burden. Second, the United States would realize significant benefits from the railroad's continued operation by the State: visitor access to Denali and other attractions; transportation of raw materials, goods and equipment to and from outlying parts of the State; and the potential that the existing railroad will be expanded into other parts of the State, thereby providing these services over a wider area. This expansion is prohibited by statute, as long as the railroad is in Federal ownership. Moreover, the provision of services over a wider area increases the value of Federal holdings and decreases Federal management costs for less accessible interior areas.

B. WARRANTY DEED

The most basic issues involved in S. 1500, as in H.R. 6308 are: What interests are to be transferred to the State, and How is the transfer to be accomplished. Neither bill is clear on these points, and either may result in serious problems and delays.

Historically, the mechanism used by the United States Government to transfer interests in land and other property has been the patent (which carries a presumption of validity) or the quitclaim deed. With the modifications suggested here and in our summary (page 1), we concur in the use of patents or quitclaim deeds to transfer interests in Alaska Railroad lands, once adequate descriptions of the landholdings and other assets have been developed.

In cases like this, conveyances from the United States form the basis for all future land transactions. The official land status records for the United Staes -- for which the Bureau of Land Management is custodian -- must therefore reflect correctly all the interests involved. The properties to be conveyed must be described fully and accurately prior to conveyance. Since BLM is the repository for all claims to any given tract, it is the best equipped to adjudicate the claims, survey the lands professionally, describe the conveyable interests and prepare the necessary conveyance documents. If BLM is not to prepare the documents, it must receive a copy of all relevant documents prior to the transfer of any interests in the Alaska Railroad properties.

We thus recommend strongly that (a) the bill be specific as to which lands, interests and improvements are to be conveyed to the State of Alaska, or (b) the legislation provide a mechanism, similar to that discussed in the summary above, for identifying and conveying these lands, interests and improvements by quitclaim deed at a later date. These interests must not be left to conjecture and interpretation. The present language of S. 1500, particularly the inclusion of lands "claimed by or for" the Railroad, included in the definition of properties to be conveyed under section 3(6), fails to provide the necessary specificity.

Section 4 of S. 1500 also requires that the United States "warrant" fee simple title to the right-of-way for the main line and branch line tracks. We do not believe this approach is necessary or appropriate. It is not necessary because the railroad is clearly capable of operating on the less-than-fee right-of-way interest it now uses. It is not appropriate because the United States itself does not own the entire fee simple estate in much of the land occupied by the right-of-way, and thus cannot convey the fee without first taking it and compensating the present owner. If a taking is intended, it should be expressly required, rather than implied.

The section also requires that the United States warrant fee simple title to all lands not determined to be equitably owned by a third party. However, because of the short time provided in the bill for delivery of the deed, it will be necessary to issue the deed before determination of equitable ownership can be made. Considering the definition of "rail properties," which is very broad, and the problems cited above, the United States would be warranting a conveyance of very nonspecific lands and interests in lands. If the United States warrants a title that is successfully challenged through the courts, it would be obligated to pay the State, Native group or other party for the property lost.

In addition, we do not believe a warranty deed will give the State what it actually wishes to acquire, which is secure title of assured quality in the properties needed for railroad purposes. A warranty deed will not guarantee this because it does not resolve title conflicts or address the question of which properties are actually needed.

Finally, Section 4 also requires that the transfer be accomplished in one deed. We do not believe the bill provides sufficient time to permit the Secretary of Transportation to do all the work necessary to prepare a single document that includes all (and only those) properties contemplated under the bill.

C. RESOLUTION OF NATIVE CLAIMS

Several Native groups have asserted claims against certain lands included in the Alaska Railroad transfer package. Although it has been suggested that these claims can be avoided by the use of statutory cancellation language, the claims raise a variety of constitutional issues involving the taking of property without due process or just compensation.

We would recommend that the legislation specifically endorse the use of negotiations and the section 3(e)(1) adjudication process, as discussed in our summary, rather than follow the approach taken in S. 1500 or section 507 of H.R. 6308. The first three subsections of section 6 of S. 1500 address the need for Alaska Native Claims Settlement Act section 3(e)(1) determinations on properties

claimed by the Alaska Railroad but subject to Native selection rights. Like the similar section of H.R. 6308, S. 1500 appears to misunderstand the purpose of a conveyance "subject to" such valid existing rights.

Conveyance "subject to" these rights does not convey the rights themselves; they remain unconveyed, subject only to identification. S. 1500, however, appears to contemplate conveyance to the State of the entire property, with subsequent reconveyance to the United States and then to the third party of lands to which a valid existing right is determined to have attached. Even if this were an appropriate means of handling valid existing rights, it should be noted that the language of the bill in subsection 6(b)(1) fails expressly to require reconveyance or provide that it may be compelled, and thus apparently allows the State to refuse to reconvey. The reconveyance provision is also inconsistent with the concept of warranted title in section 4(a)(2) of S. 1500.

S. 1500 properly identifies the section 3(e) Native rights that must be recognized, but subsection 6(b)(2) directs the Secretary of the Interior to complete the necessary determinations within one year. One year may be adequate to complete a 3(e)(1) determination on a single property, but even then it is the minimum time necessary. Three years would be more appropriate, although even this would not allow for appeals.

The Department believes the negotiation/adjudication process outlined above will expedite the identification of the lands claimed by the Railroad in which Native selection rights are asserted. The amount of land involved should not pose serious problems. Of approximately 38,000 acres claimed by the Railroad, only about 8,300 acres are subject to Native selection rights and the 3(e) obligation. This consists of an estimated 4,100 acres of actual right-of-way lands (out of 12,000 acres total), and an estimated 4,200 acres of non-right-of-way lands (out of 26,000 acres total). Thus only about 20 percent of the acreage sought by the Rairoad must be adjudicated to determine the extent of Native rights.

Also, while recognizing Native claims arising under section 3(e), S. 1500 precludes consideration of Native rights under other legislation cited in section 6(a)(2)-(4) and does not address Native allotments. Thus some, but not all, Native interests carry forward. In each instance where a valid existing right is not recognized, a taking occurs, subjecting the United States to litigation and liability.

A taking may also result from section 6(b)(2)(A)'s requirement that a fee interest in railroad lands be transferred to the State. The Department's regulations under section 3(e) provide that the United States need only reserve from Native ownership (and here, convey to the State) an easement, when the tract is used primarily for such purposes as rights-of-way, and when the State Director determines that an easement affords sufficient protection and is customarily used for the purpose. 43 C.F.R. Section 2655.2(c)(1). In fact, the grant of a right-of-way only, and not a fee, is customary under 43 U.S.C. Section 934 (1976) for railroad purposes. It is thus possible that an action could be maintained against the United States for taking the full fee when only an easement was necessary under established practice.

D. CIRI AMENDMENTS

Beginning at section 6(d)(1), S. 1500 contains a number of amendments relating to the rights of Cook Inlet Region, Inc. (CIRI) under its special land selection laws. We support ~~tow~~ 2 aspects of this portion of the bill: extending the time to fulfill the in-region property pool; and updating the list of properties excluded from the out-of-region property pool. We feel the remaining CIRI provisions are undesirable and, therefore, oppose them.

First, the amendments in section d(2) involve the Secretary of the Interior as an intermediary in contacts between CIRI and the Administrator of the General Services Administration. This involvement is cumbersome and unnecessary. It would also necessitate the recruitment, training and assignment to Alaska of specialists who can process these claims; this in itself would be expensive and time consuming. We believe the process would be expedited by allowing CIRI and GSA to deal directly, with Interior notified of the outcome.

Second, among the amendents at section 6(d)(3) is a provision establishing the acre-equivalent exchange value of out-of-region lands available to CIRI. This exchange value is set at $250 per acre, which is established by the bill as one-half the value of certain in-region lands. This would amount ot a total of $225 million, an increase of $156 million over the $69 million which is the value of CIRI's total existing entitlement. The out-of-region exchange rate has not previously had a statutory value attached, and we are seriously concerned that attaching such a value for CIRI will set an adverse precedent for other regions, allowing them to assert to Congress and the courts that they have not received a fair and just settlement unless the lands conveyed to them are of equal value. (In fact, most of the land conveyed under ANCSA to date would probably be appraised at significantly less than $250 per acre.) Furthermore, we do not want to encourage other Native regions to ask for comparable privileges of bidding on GSA properties, bidding on public lands, or liquidating the value of their land holdings by seeking appropriations from Congress.

Third, expanding CIRI's present pool of in-region selection lands inserts more complications into an already complex process and would tend to encourage similar requests from other Native groups. The bill imposes a duty on this Department to audit and review the uses and needs of all other Federal agencies for land in the Cook Inlet Region. This raises several serious problems.

- It would duplicate responsibilities which the General Services Administration already has.
- It would place heavy burdens on the Interior Department, which lacks the manpower and expertise to assess the needs of other Federal agencies.
- It would serve as an unnecessary and undesirable source of conflict between this and other Departments.

At the very least, if it is deemed essential that this duty be retained in the bill, the legislation should list the specific lands to be audited, rather than leave the question open to inter-Departmental debate.

Finally, only a small portion of CIRI's original 1976 entitlement has been fulfilled to date. Expanding the pool of entitlement properties is likely to add significant new delays to our program of effecting these transfers.

E. FUTURE RIGHTS-OF WAY

We have no objection to the State's proposed expansion of rail service in Alaska. However, we continue to feel that new authority is neither necessary nor desirable.

Title V of the Federal Land Policy and Management Act (FLPMA) and Title XI of the Alaska National Interest Lands Conservation Act (ANILCA) provide a process whereby future rights-of-way can be granted to any applicant across Federal lands. This process provides adequate assurance that the railroad can be allowed to expand, while also providing protection to those critical resources in conservation system units. For this reason, the Administration's Alaska Railroad legislation included no language dealing with future expansion.

This Department will process any State application in accordance with the process provided under Title V of FLPMA and Title XI of ANILCA. The Secretary has already told Governor Hammond that the Department is ready to begin the process of conveying rights-of-way across Federal lands in the State. Thus, no special or new authority is needed. We would also make the following observations.

The directions and mandates of the proposed legislation governing issuance of rights-of-way for future expansion of the railroad appear to go far beyond the concepts of a standard right-of-way. A right-of-way does not normally convey land or give a leasehold interest, as suggested by subsection 9(a)(3) of S. 1500, nor do rights-of-way usually grant exclusive use rights. Additionally, since the State is willing to accept only a right-of-way interest for future expansion, we feel it is inconsistent for it to demand fee simple ownership of the existing railroad right-of-way.

Paragraphs 9(a)(1)-(6) of the Senate bill establish a set of superseding requirements that are inconsistent with the principal provisions of FLPMA.

- Paragraph (1) exempts the Railroad from cost reimbursement and bonding requirements otherwise allowed or imposed under FLPMA sections 504(g) and 504(i).
- Paragraph (2) establishes a minimum right-of-way width, unlike FLPMA section 504(a).
- Paragraph (3) automatically includes extra width for communication lines whenever requested.
- Paragraph (4) requires a grant to the State of exclusive use and enjoyment of both the surface and subsurface and effectively requires the grant of a fee interest.
- Paragraph (5) gives the State the power to authorize additional uses in the right-of-way, in contrast to FLPMA section 503, which reserves this power to the United States.

- Paragraph (6) grants the State the right to extract and use construction materials in the right-of-way, unlike FLPMA section 504(f).

Finally, although the lack of a reference to section 9 in section 10 makes it somewhat unclear, it appears that section 9 future rights-of-way are subject to reversion only under the terms of section 10. As a result, future rights-of-way, like transferred interests generally, are irrevocable except within a five-year period after issuance, and then only if converted to a use that would prevent the railroad from continuing to operate. FLPMA section 506, in contrast, allows suspension or termination of a right-of-way for either abandonment or noncompliance with grant conditions at any time during the term of the right-of-way. (See section K, below,)

In connection with future rights-of-way, the language of subsection 2(4) should be noted. This portion of the bill states a congressional finding that "such expansion of the railroad as may be necessary or convenient in the future will constitute an appropriate public use of the rail system and associated properties and will promote the general welfare of Alaska's residents and visitors." Unless it is intended to pre-determine the public purpose and necessity of future State condemnation actions for additional rights-of-way across private land, the purpose of this language is unclear.

Section 507(g) of the House bill provides that future rights-of-way may be issued as appropriate under existing law. This provision is superior to section 9 of the Senate bill. We have advised the State that we believe existing laws are adequate for future right-of-way needs, and they have in fact begun advance application activities.

Finally, Section 507(c)(10) of the House bill attempts to define right-of-way as an "area," when it should be described as an interest in land or as a fee interest in land contained within the boundaries of the right-of-way. Perhaps it should refer to 43 U.S.C. Section 934 regarding railroad rights-of-way.

F. EMPLOYMENT

Since labor issues are not within the jurisdiction of this Department, we would simply note that section 7 of S. 1500 contains extensive provisions regarding employee rights. In this regard, the Senate bill is preferable to H.R. 6308, which does not address employee rights at all, except in the context of reversions. We would also point out that neither S. 1500 nor H.R. 6308 addresses the issue of what will happen to railroad employees if there is ever a reversion to the United States. The Senate bill clearly provides for reversion; however, it repeals 43 U.S.C. Section 975, under which the Railroad would be administered by the United States after reversion. This repeal leaves employees without protection and the United States without authority to operate the facility in the (unlikely) event of a reversion.

G. FEDERAL LAWS APPLICABLE TO RAIL CARRIERS

43 U.S.C. 912 (abandonment and reversion; relocation of rail lines) and 43 U.S.C. 934 (conveyance of rights-of-way) generally apply to issues of the kind raised here. We believe the bill or its legislative history should clearly reflect Congress' intent as to whether existing law or the Alaska Railroad transfer legislation is to have priority in cases of conflict.

H. LAND TRANSFERS TO DOI AND DOA

S. 1500 does not address the issue of what future rights of access the National Park Service, Forest Service and other Federal agencies have across the railroad right-of-way, once the land is transferred from the United States Government. The House bill permits Federal agencies to cross the right-of-way so long as they do not interfere with the operation of the railroad. The question of access is important for law enforcement, visitation, wildlife management and other purposes.

The Department believes the general approach used in section 7 of H.R. 6308 is workable and should be supported. Some modification may be appropriate, however, to reflect the precise access needs of the Federal agencies.

I. STATUTORY PRESUMPTION FOR 3(e)

We would prefer that there be no statutory presumption, and that we be permitted to apply the existing regulations. The Senate bill attempts to provide guidelines for applying section 3(e) to settle Native claims to railroad lands; in so doing, it would substantially alter the guidelines established under existing laws and regulations, and would increase the uncertainties surrounding the outcome of judicial proceedings. The House bill provides that the disputed lands shall become "public lands" if the adjudication process is not completed within a fixed period of time (one year from date of enactment of the legislation).

We would prefer to work with Congressional committees on appropriate legislative history, to assure a mutually satisfactory interpretation of section 3(e). Finally, we would also reiterate our belief that the one-year adjudication period provided by these bills is too short and should be increased to three years (see section C above).

J. DATE OF TRANSFER

The Senate bill, in section 3(3), clearly defines date of transfer as the date of delivery of a single deed of conveyance. The House bill, at section 507(c)(7), defines it as the date the Secretary "completes" the transfer of rail properties; this is ambiguous, given the staging of conveyances contemplated in the bill. It is made more confusing by the provision in section 507(e)(4)(B) that, after the date of transfer, certain lands may attain the status of "rail properties" before they have been transferred. Although we have difficulty with the Senate bill's single deed concept, it makes the "date of transfer" definition clear.

Make no transfer until State agrees and completes

However, as we have suggested in our summary, we believe the legislation should be amended to vest operating rights in the State shortly after the bill's enactment into law, with actual conveyance of property rights and delivery of the deed(s) to occur at a later date, as each property area is reviewed and rights to it are determined. This approach would be more efficient and cost-effective; would avoid the potential delays built into the present bills; would expose the United States to far less liability, because it allows for a careful and orderly review of valid existing Native and other rights; and could be carried out within existing budgetary and manpower limitations, an important consideration in these times of fiscal restraint. Equally as important, this approach would allow the State to take over the railroad's operation immediately.

K. DENALI NATIONAL PARK

The Alaska Railroad right-of-way runs through Denali National Park and Preserve for approximately 33 miles. The right-of-way generally averages about 200 feet in width, except at McKinley Station, where it is 400 feet wide. While the railroad is under the jurisdiction of the Department of Transportation, that part of the right-of-way within Denali National Park and Preserve is now subject to the laws and regulations applicable to the protection of park values (see section 202(3)(a) of the Alaska National Interest Lands Conservation Act). Protection of park values here is clearly essential and can be accomplished in a manner that will not interfere with railroad operations.

As currently drafted, S. 1500 meets each of our major concerns regarding the Park. Section 8(d) applies laws and regulations for protection of park values to all rail properties within the Park, subject to the concurrence of the Governor. Section 12 exempts rail properties within one-quarter mile of McKinley Park Station from transfer to the State, with the exception of a 200-foot right-of-way along the main track and a 16-foot right-of-way along a secondary track. Section 12 also requires transfer of the exempted properties to the Secretary of the Interior for administration as part of Denali National Park and Preserve. Section 4(a)(2)(B) reserves to the United States the right to use and occupy 5,000 square feet of land at Talkeetna for National Park Service administrative activities. Finally, section 4(a)(2)(C) reserves existing and future rights-of-way and easements across the transferred lands for park administration, transportation and utility purposes.

H.R. 6308 addresses these concerns in section 507(d) in a slightly different fashion, but does not accomplish its purposes with the clarity of S. 1500. The concepts in section 507(d) are somewhat confused. Paragraph (1) essentially requires the quitclaim of interests in railroad lands within conservation system units and National Forests to the United States, with a reservation to the Railroad of the right to use and occupy the right-of-way. Paragraph (d)(2)(C) also "reserves" to the Secretary certain rights-of-way and easements, apparently across and within the right-of-way, but there is no conveyance document at this point in which such a reservation may be made. The paragraph could simply provide that the Secretary shall have the right to (a) use the lands within the right-of-way for the specified purposes, and (b) grant other rights-of-way or easements across or on the same land.

Neither bill properly recognizes the need of the Department of the Interior for access and crossing privileges on the right-of-way, however.

Section 7 (d)(4) of H.R. 6308 provides that the State's right to use the right-of-way in Denali and the National Forests will terminate if the State abandons the right or discontinues use of the lands for railroad purposes. The treatment of abandonment in each case is parallel, although the House bill lacks a general provision on abandonment elsewhere than in Denali or the National Forests.

The Senate bill is superior in this regard; its section 10 deals with reversion generally. Unfortunately, it limits the period during which reversion is required to only five years after date of transfer and sets different standards for park and non-park land.

Section 10(b) of S. 1500 provides that title to railroad lands within Denali will revert to the United States if "rail service is abandoned" over the part of the property within the Park. However, the standard for reversion within Denali is abandonment, while the standard for reversion of most of the rest of the transferred interests in section 10(a) is "conver(sion) to a use that would prevent the State-owned railroad from continuing to operate." The bill does not explain how this determination is to be made, or by whom, and we are unaware of any reason for the difference between the two standards.

L. IBLA DECISION ON THE ALASKA RAILROAD

Attached for your review is a recent decision by the Interior Board of Land Appeals (IBLA). Although we have some concerns regarding the reasoning of the decision, it does reaffirm the conclusion that the Alaska Railroad has had administrative jurisdiction over only a right-of-way, not a fee interest in lands.

Take this out.

906

RC'D. FROM:
ANCH. ✓
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FBKS.

DATE: 8/24 3:15pm
DEL. BY: Marie

To Bill
From Merks 8/24/82

1 of 3

OUTLINE FOR MODIFICATIONS TO LANDS PROVISIONS IN S 1500
(ALASKA RAILROAD LEGISLATION)

I. MODIFICATION IN THE METHOD OF TRANSFER TO THE STATE.

A) In order to address concerns raised by federal agencies affected under S 1500, in particular the Department of the Interior, section 4 of the legislation be changed to require:

1) An initial deed of interim conveyance to the state of rail properties plus transfer of all authority to manage and operate the railroad, and

2) Within a fixed amount of time Interior shall conduct surveys, and where required, adjudicate to allow issuance of patent on all railroad properties. This approach would provide quality title to the State by employing regular Interior land conveyance methods.

II. MODIFICATION OF TREATMENT OF VALID EXISTING RIGHTS:

A) To accommodate concerns expressed by the federal agencies, Alaska Native Corporations, and the State of Alaska, section 6 of S 1500 would be changed to require:

1) On all claims to property of the Alaska Railroad the Secretary of the Interior would determine valid existing rights and issue patent to the owner of a tract within two years after the date of enactment of this legislation;

communication, and transmission purposes on the right-of-way consisting of 100 feet from the centerline on each side of the existing track;

3) Priority in adjudication is mandated for 3(e) claims. The State, Interior, Transportation, and affected Native Corporations are provided a negotiation forum to expedite 3(e) determinations.

4) Lands subject to 3(e) claims would be held in escrow under conditions that ensure existing uses by the railroad or relevant native corporations are protected;

5) Railroad right-of-way across 3(e) selections will be granted with all possible deference to regulatory interpretation of the Alaska Native Claims Settlement Act.

III. MODIFICATION OF RIGHT-OF-WAY LANGUAGE.

A) The Department of the Interior has frequently objected that section 9 of S 1500 is broadly expanding existing federal law, including the recently passed transportation title in the Alaska Lands bill. The department points out that the State has testified it has no interest in expanding upon existing law to obtain rights-of-way across federal lands. To address these concerns:

1) Section 9 would be modified to preserve existing law regarding compensation by the State for rights-of-way and payment of administrative fees and costs;

Bill
3 of 3

2) No fee interest would be granted in future right-of-ways, but exclusive rights to use the right-of-way for transportation, communication, and transmission purposes would be preserved. This provision is still an expansion from existing law.

IV. MODIFICATION OF LANGUAGE IN S 1500 DEALING WITH REVERSION.

A. Federal agencies, native corporations, and private land holders have expressed concern that abandonment or misuse of the federal right-of-way would not be redressed by this legislation. S 1500 would be modified to:

1) Provide for reversion to all abutting land owners in cases of express abandonment or discontinuance of use of the right-of-way for transportation, communication, or transmission purposes for 18 years, a reasonable period for presumptive abandonment;

2) Consolidation of land ownership patterns would be guaranteed under this provision by requiring the Secretary of the Interior to convey abandoned right-of-way lands to abutting State, federal, or private land owners.

MEMORANDUM

TO: Senator Stevens

FROM: Mark Schneider

RE: Railroad

DATE: January 27, 1983

Vern Wiggins, Bill Horn and Curt McVee are here to discuss the Railroad legislation. They have a number of complaints. Most of them are not rational complaints, but are related to the timing of certain duties required by the bill.

1. They are complaining about compilation of the six-month closing report. Transportation wants a land assessment by April 30th.

2. They are complaining about the work required in meeting a ten-month Native claim settlement procedure followed by 14 months of adjudication (two years total)

3. The Act allows three years for adjudication of all claims of valid rights (homestead, mining, etc.).

4. There is a flexible five-year cap for completion of surveys of the properties. The survey is subject to the concurrence of the Governor regarding priorities for other state selection surveys.

McVee is running around Alaska claiming he will not be able to do anything else but Railroad work while letting the land conveyance program wither on the vine. This is absurd. Horn supported most of these dates as reasonable in our discussions at Interior. Horn has always stated he will be able to settle these Native claims within months. Secondly, there is no death penalty for missing deadlines for adjudication. The idea is to clean up the Railroad land status quickly. The Native claims have, after all, been pending for a decade and this legislation has been around two years spawning infinite studies of the status. BLM will not have to start from scratch.

We have drafted this bill to put maximum responsibility at Transportation. Interior is basically support staff. Transportation is confident they can do this job with a reasonable amount of staff and support from Interior. We should offer additional funding if needed, but I think BLM is greatly exaggerating the burden of this Act.

You should note that Horn does not feel $2.5 million is needed for the Dunkle/Kantishna study. He would like to re-program some of those funds into the Railroad. I have specifically told Bill to obtain consent of the affected miners and our office before making any move.