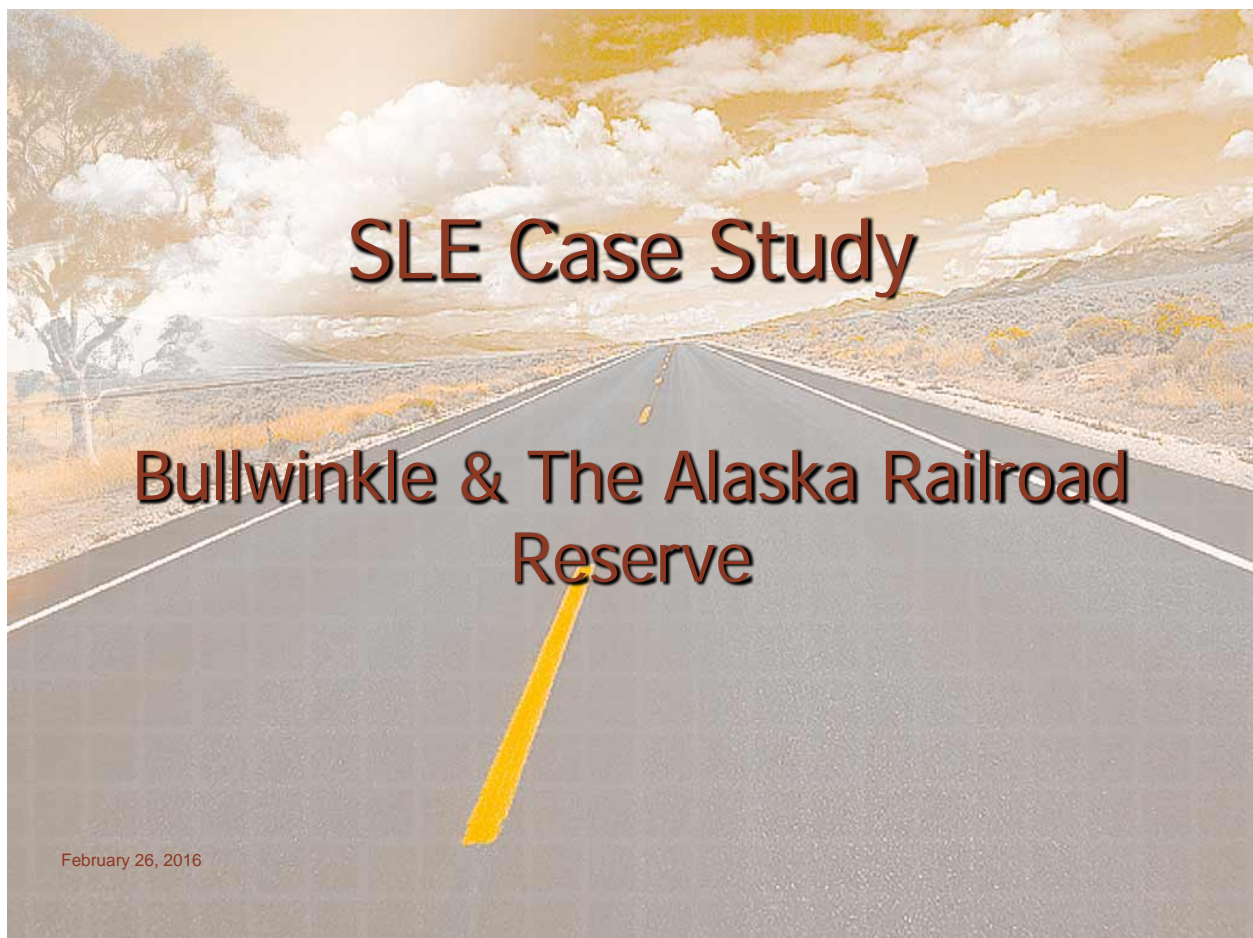




# Section Line Easements

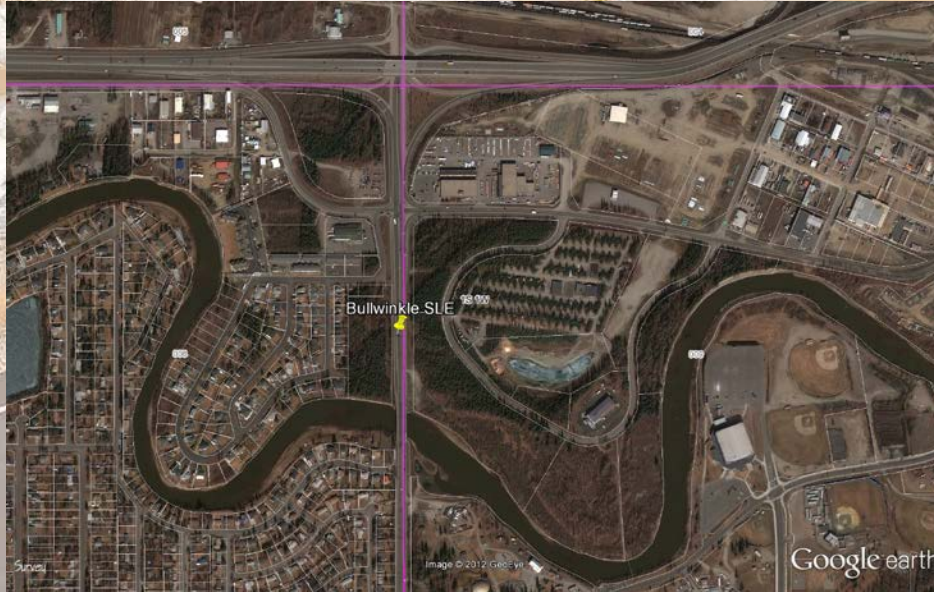


Access Law and Issues Affecting Public and Private Lands In Alaska  
February 26, 2016



February 26, 2016

# Peger Road - Fairbanks



S8/S9 T.1S., R.1W., F.M.

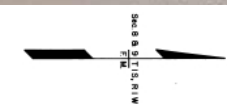
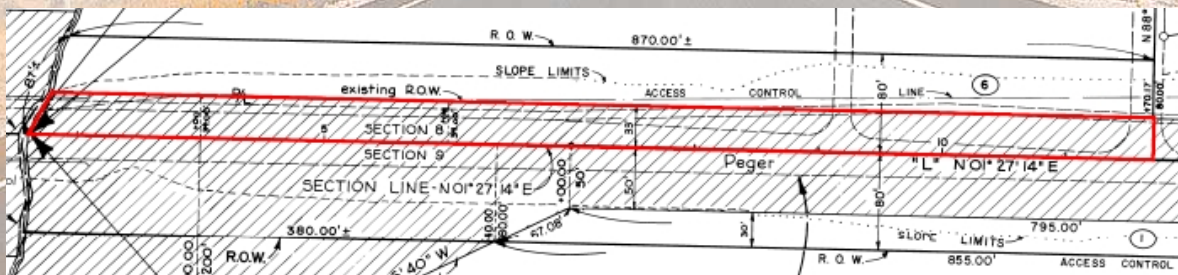
February 26, 2016

## STATE OF ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

RIGHT OF WAY MAP  
RS-RRS-M-000S (52)  
GEIST ROAD EXTENSION  
Peger Road to College Road Connector

## Bullwinkle Parcel

WALTER H. BULLWINKLE  
GOVERNMENT LOT 10



DOT Widens Peger Road Claiming  
Existing 33' SLE on G.L. 10

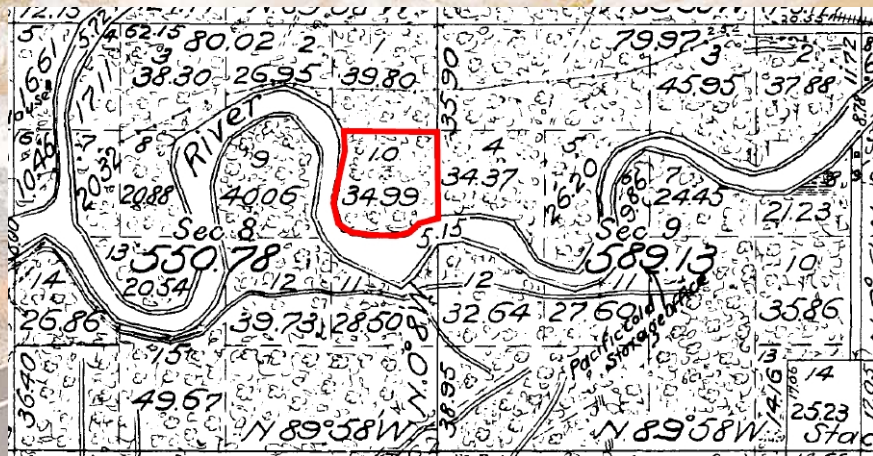
February 26, 2016

# Does The 33' SLE Exist?

## What Was The Date Of The Approved Township Survey?

February 26, 2016

### Sec. 8/9 -T.1S., R.1W., F.M.



The above map of Township No. 1 South Range No. 1 West of the Fairbanks Meridian Alaska is strictly conformable to the field notes of the survey thereof on file in this office, which have been examined and approved.  
U. S. Surveyor General's Office.  
Juneau, Alaska, June 7, 1913

*W. L. Linton*  
Surveyor General.

February 26, 2016

### Survey Approved ~ June 7, 1913

Does The 33' SLE Exist?

~

When Was the RS-2477  
Offer Accepted?

February 26, 2016

## SLE Table

Surveyed Federal lands that were unreserved at any time during the indicated time period.	Effective Dates	Surveyed lands that were under State or Territorial ownership at any time during the indicated time period. (Note: includes un-surveyed lands after July 1, 1960)
none	April 5, 1923	None
66'	April 6, 1923 To January 17, 1949	66'

Federal SLE Offer Accepted by  
Territory of Alaska on  
April 6, 1923

February 26, 2016

# Does The 33' SLE Exist?

~

Were the Federal Lands  
Unreserved When the  
Township Survey Was  
Approved and the RS-2477  
Offer Accepted?

February 26, 2016

## Bullwinkle Argument

SLE Could Not Exist  
As Section 8 Had  
Been Withdrawn For  
Townsite & Railroad  
Purposes BY E.O. No.  
1967-A On June 23,  
1914.

February 26, 2016

### Executive Order.

#### ORDER OF WITHDRAWAL

##### Alaska Townsite and Railroad Withdrawal No. 2.

Under and pursuant to the provisions of the Act of Congress approved March 12, 1914 (Public No. 69), entitled "An Act to authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes," it is hereby ordered that the following lands, be, and the same are hereby, withdrawn from settlement, location, sale, entry, or other disposition, and reserved for townsite purposes and in connection with railroad or other construction work contemplated by the act.

##### *Fairbanks Meridian.*

T. 1 S., R. 1 W., Sec. 2, all  
Sec. 3, all.  
Sec. 4, all  
Sec. 5, all  
Sec. 8, all  
Sec. 9, all  
Sec. 10, all  
Sec. 11, all  
T. 1 S., R. 2 W., Sec. 28, all  
Sec. 32, all.

WOODROW WILSON

THE WHITE HOUSE,

23 June, 1914.

[No. 1967-A.]

# State's Argument

**E.O. 2236  
Released the  
Withdrawal  
of Section 8  
on August  
17, 1915**

February 26, 2016

## **Executive Order.**

### Alaskan Townsite.

Under and pursuant to the provisions of the Act of Congress approved March 12, 1914 (38 Stat., 305), entitled "An Act to authorize the President of the United States to locate, construct and operate railroads in the Territory of Alaska and for other purposes", it is hereby ordered that the following described lands, withdrawn by executive order of June 23, 1914, and reserved for townsite purposes under said Act, be, and the same are, hereby eliminated from said order, to wit: In Township 1 South, Range 1 West, Fairbanks Meridian: All of Sections No. 2, 5, 8, 11, and the north half of Sec. 4, Lots 1, 2, 3, 4, 5, 7, 8, 9, and 11 in Section 3, and Lots 6, 7, 8, 9, 10, 11, 12, 13, and 14, W.  $\frac{1}{4}$  of SE.  $\frac{1}{4}$ , and S.  $\frac{1}{2}$  of SW.  $\frac{1}{4}$  of Sec. 9, Lots 9, 10, 11, and 12 in Sec. 10.

Said elimination shall not affect the withdrawal of any other lands by said executive order of June 23, 1914.

**WOODROW WILSON**

THE WHITE HOUSE,

**17 August, 1915.**

**[No. 2236.]**

# Unreserved Status

**Over Time, There Were Multiple  
Withdrawals and Releases Modifying The  
Unreserved Land Status Of The Bullwinkle  
Property.**

~

**Since the RS-2477 Acceptance, There Had  
Been Two Large Gaps When The Lands  
Had Been Unreserved And Subject To  
Establishment Of The SLE: 11/26/24 to  
3/9/31 And 9/16/36 to 3/3/42.**

February 26, 2016

# Bullwinkle's Entry Date

01-AUG-1947	001 Application Filed	APPLICATION RECEIVED	--
04-JAN-1954	244 Final Proof Filed	--	--
08-OCT-1954	131 Field Report Approved	--	--
11-APR-1960	341 Proof Of Pub Received	--	--
28-JUL-1960	879 Patent Issued	--	PA0001211125

Bullwinkle Filed On The Same Day That The Previous Homestead Entry Was Relinquished.

~

If There Had Been No Other Periods Of Unreserved Status, The SLE May Have Been Established Immediately Prior To The Filing Of Bullwinkle's Application.

February 26, 2016

## SLE Confirmed

THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,

Plaintiff,

vs.

0.947 acres more or less;  
WALTER H. BULLWINKLE; FAIRBANKS  
NORTH STAR BOROUGH; and also  
all other persons or parties  
unknown claiming a right, title,  
estate, lien, or interest in the  
real estate described in the  
complaint in this action,

Defendants..

FILED in the Trial Courts  
State of Alaska, Fourth District

SEP 9 1991

By \_\_\_\_\_ Deputy

Project No. RS-RRS-M-000S(52)  
Parcel No. 6  
Case No. 4FA-86-2479 Civil

### ORDER CONFIRMING SECTION LINE, EASEMENT

IT IS HEREBY ORDERED that

1. The existence of the section line easement for Pager Road is hereby confirmed.

February 26, 2016

# Conclusion

- Section Line Had Been Surveyed...
- Land Had Been Unreserved...
- During Period of RS-2477 Acceptance

~

All Requirements Necessary To  
Established A Valid RS-2477 Section Line  
Easement Under State Law Had Been  
Met.

February 26, 2016

# SLE Case Study

A Partial Township Survey &  
Native Allotment

February 26, 2016

# North of Wasilla



SE ¼ S11 T.18N., R.2W., S.M.

February 26, 2016

## SE ¼ ~ Section 11



February 26, 2016

Mat-Su Borough GIS

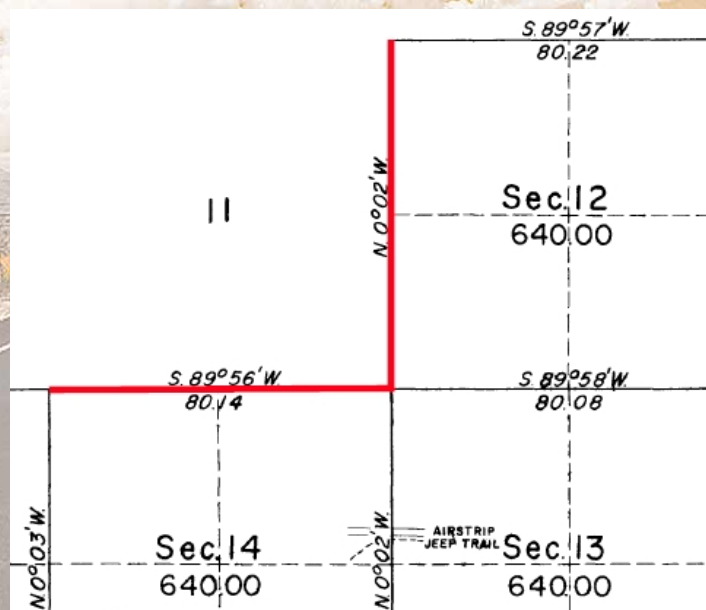
Does The 33' SLE Exist  
Along the South Boundary  
of Section 11?

~

What Was The Date Of  
The Approved Township  
Survey?

February 26, 2016

## Partial Township Plat



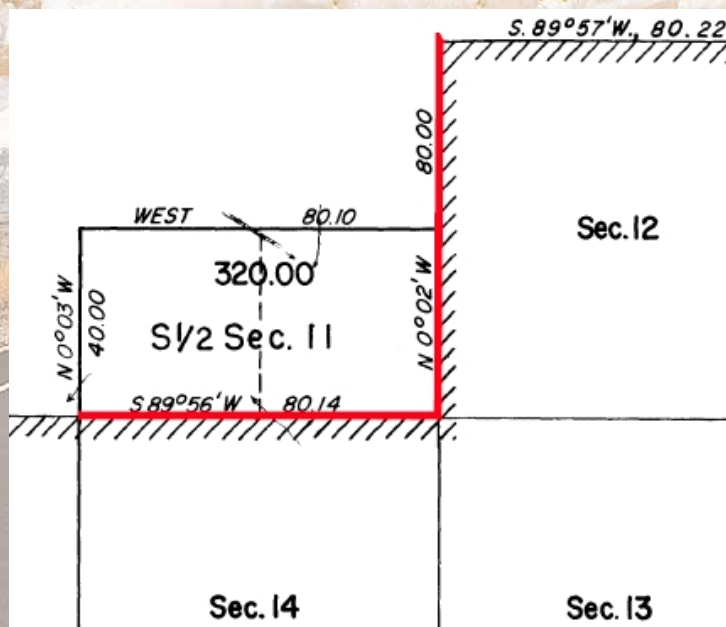
February 26, 2016

Approved November 18, 1960

**Question: Is A 33' SLE  
Along The South & East  
Boundaries Of Section 11  
Valid If The Approved  
Survey Does Not  
Encompass The Entire  
Section?**

February 26, 2016

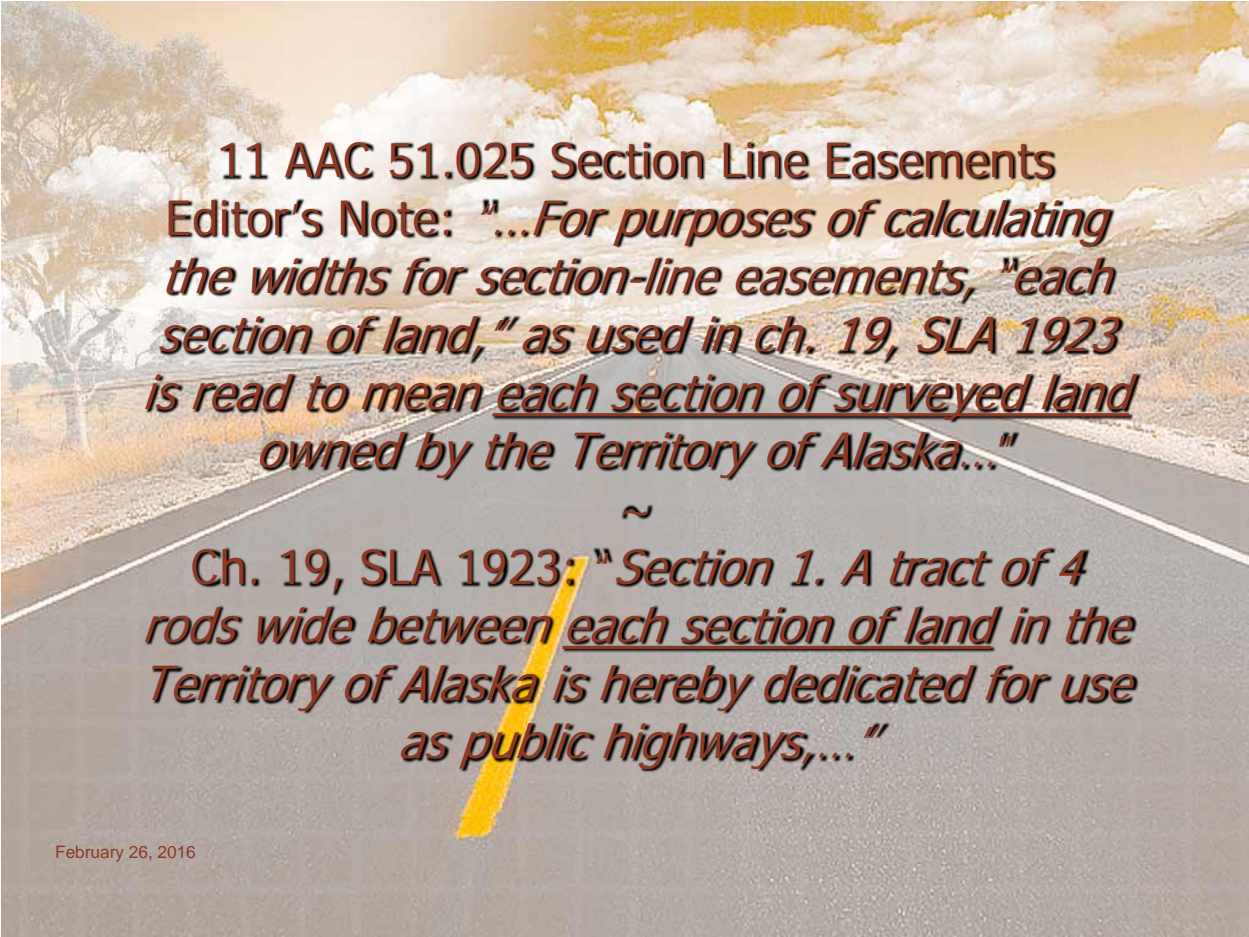
## **Township Extension Survey**



**Section 11  
Still Not  
Completely  
Surveyed**

February 26, 2016

**Plat Approved April 9, 1963**

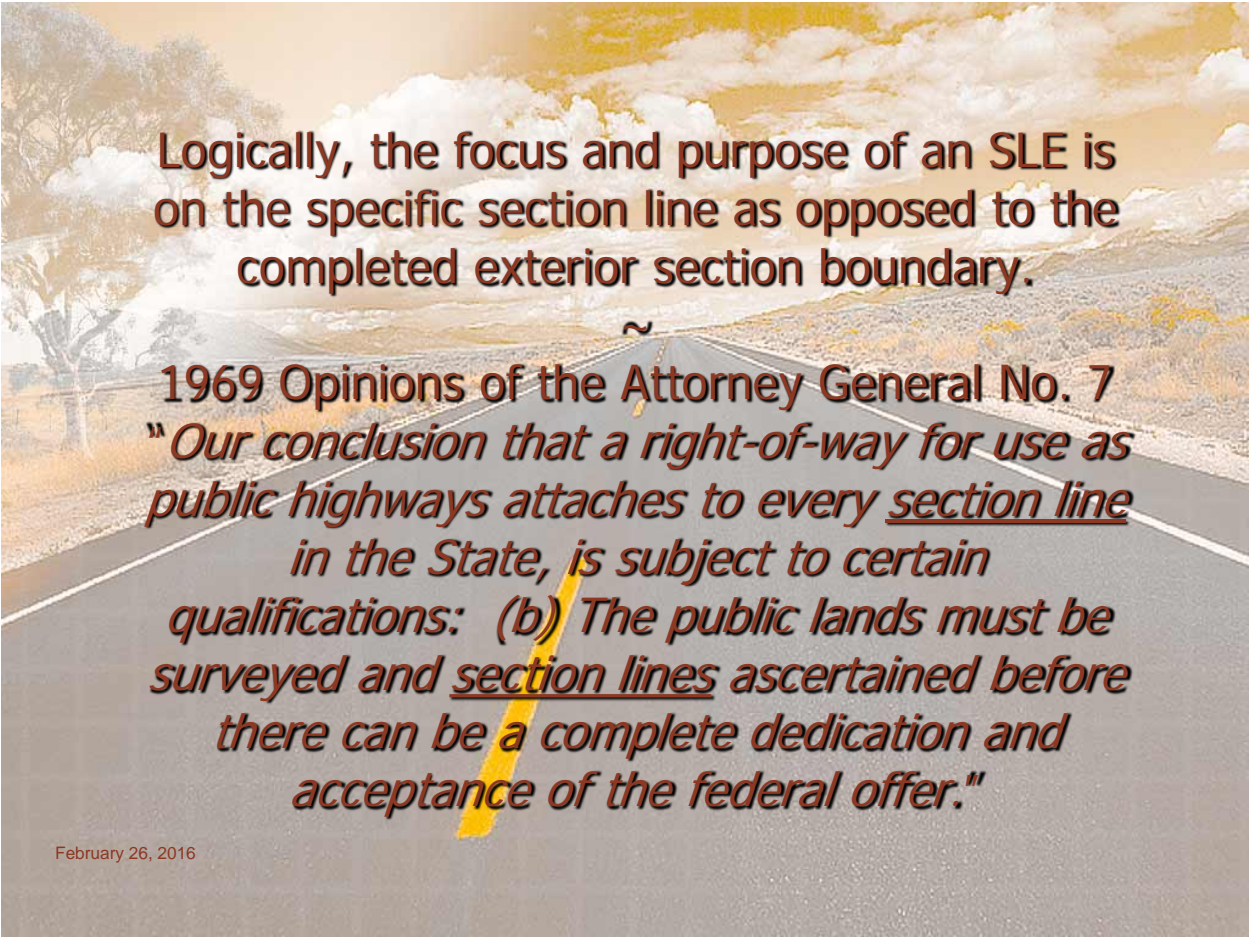


11 AAC 51.025 Section Line Easements  
Editor's Note: *"...For purposes of calculating the widths for section-line easements, "each section of land," as used in ch. 19, SLA 1923 is read to mean each section of surveyed land owned by the Territory of Alaska..."*

~

Ch. 19, SLA 1923: *"Section 1. A tract of 4 rods wide between each section of land in the Territory of Alaska is hereby dedicated for use as public highways,..."*

February 26, 2016



Logically, the focus and purpose of an SLE is on the specific section line as opposed to the completed exterior section boundary.

~

1969 Opinions of the Attorney General No. 7  
*"Our conclusion that a right-of-way for use as public highways attaches to every section line in the State, is subject to certain qualifications: (b) The public lands must be surveyed and section lines ascertained before there can be a complete dedication and acceptance of the federal offer."*

February 26, 2016

Assuming the Partial  
Survey of Section 11 Does  
Not Preclude the  
Application of an SLE,  
Does The 33' SLE Exist?

~

When Was the RS-2477  
Offer Accepted?

February 26, 2016

## SLE Table

Surveyed Federal lands that were unreserved at any time during the indicated time period.	Effective Dates	Surveyed lands that were under State or Territorial ownership at any time during the indicated time period. (Note: includes un-surveyed lands after July 1, 1960)
66'	March 21, 1953 to December 14, 1968	100'
none	December 14, 1968 to Present	

Federal SLE Offer Accepted  
Again by Ch. 35 SLA 1953 On  
March 21, 1953

February 26, 2016

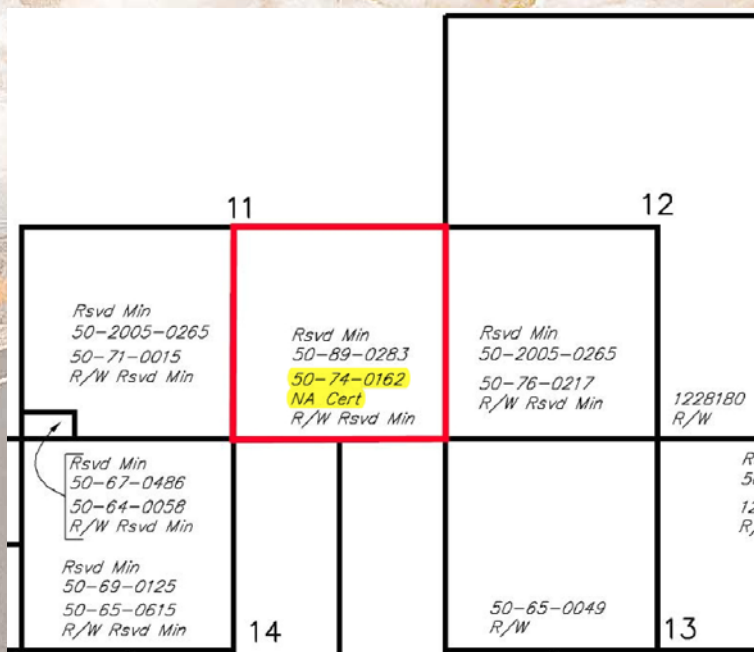
# Does The 33' SLE Exist?

~

## Were the Federal Lands Unreserved When the Township Survey Was Approved and the RS-2477 Offer Accepted?

February 26, 2016

### BLM Master Title Plat



February 26, 2016

T.18N., R.2W., S.M.

# Native Allotment Certificate

AA-7201

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
Anchorage, Alaska

## NATIVE ALLOTMENT

IT IS HEREBY CERTIFIED That pursuant to the authority delegated to her by Bureau Order No. 701, as amended December 18, 1964 (29 F.R. 18393) of the Director of the Bureau of Land Management, the Chief Adjudicator, Anchorage Land Office on May 30, 1974, approved the application, Anchorage Serial Number AA-7201, of Mary L. Cook of Anchorage, Alaska, filed pursuant to the Act of May 17, 1906 (34 Stat. 197; 48 U.S.C. 357), as amended, for:

Seward Meridian, Alaska.  
T. 18 N., R. 2 W.,  
Sec. 11, SE $\frac{1}{4}$ .

February 26, 2016

N/A Certificate 50-74-0162

UNIT STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
ALASKA NATIVE ALLOTMENT APPLICATION AND  
EVIDENCE OF OCCUPANCY  
Act of May 17, 1906 (34 Stat. 197)

8a. From what date have you occupied the land applied for? July, 19 55

b. Are the corner regulations?

### EVIDENCE OF OCCUPANCY

#### 1. PERIODS OF ACTUAL RESIDENCE ON

CALENDAR YEAR	BEGAN		ENDED		IF ABSENT FROM
	MONTH	DAY	MONTH	DAY	
1955	7		12		Return to home in town
to					
Present					

#### 5. FISHING, TRAPPING, AND OTHER USES OF THE LAND

CALENDAR YEAR	USE BEGAN		USE ENDED		TYPE OF USE	REMARKS
	MONTH	DAY	MONTH	DAY		
1955	7	(1955)	10		pick berries	Seasonal use for subsistence

## Allotment Application

Filed: March 20, 1972

Occupancy Claimed from July of 1955

February 26, 2016

# Is the Land Reserved?

If Rights Vested as of the Date of Application, (...as they do with a Homestead Entry), the SLE would become effective as of the date of Township Survey – 11/18/60

~

If Date of Occupation Controls, The Land Would be "*Reserved*" Before The Survey is Approved...

February 26, 2016

# Does It Even Matter?



An Allotment is Federal Trust Land...and the Feds do not accept the concept of SLE's!

# The Rest of The Story...

msl09153

## DEED TO RESTRICTED NATIVE LAND

THIS DEED, made and entered into this Fourteenth day of July, Two Thousand Six, by and between Mary L. Cook, Alaska Native of 4000 McMahon Avenue, Anchorage, Alaska 99516, GRANTOR, and Dennis Byler, of P.O. Box 877405, Wasilla, Alaska 99687, GRANTEE. This conveyance is made pursuant to the Native Allotment Act of May 17, 1906 (34 Stat. 197), as amended by the Act of August 2, 1956 (70 Stat. 954).

SE1/4, Sec. 11, T. 18 N., R. 2 W., Seward Meridian, Alaska, containing 160.00 acres. (Palmer Recording District) (State of Alaska).

Deed to Restricted Native Land - Sale  
Mary L. Cook to Dennis Byler  
Restrictions NOT retained

July 14, 2006 ~ Allotment Deeded to Private  
Party Without Restrictions! It Is Now  
Subject to State Law Including SLEs.

## One More Time...

Was the Land Reserved at the Time of  
Survey Approval?...

~

If 1955 Allotment Occupation Reserved Land,  
There is No SLE...

If 1972 Application Reserved Land, There is  
an SLE...

# Use & Occupancy...

The "*Relation Back*" Doctrine Vests Rights at the Commencement of "*Use and Occupancy*"

~

Prior to 1987 Allotments Were Subject to BLM ROW Grants Provided the Grants Were Issued Before an Allotment Application...

February 26, 2016

# Occupancy or Application

A Ruling on the Merits of the Issue in Federal Court Has Been Defeated by Federal Refusal to Waive Sovereign Immunity

~

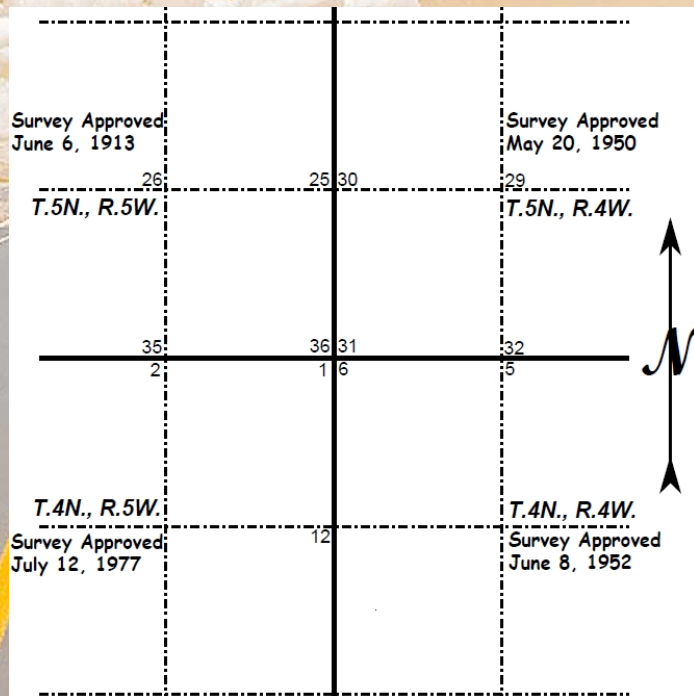
How Would the Alaska Court Rule Regarding the Date the Land Was Reserved in this SLE Case?

February 26, 2016

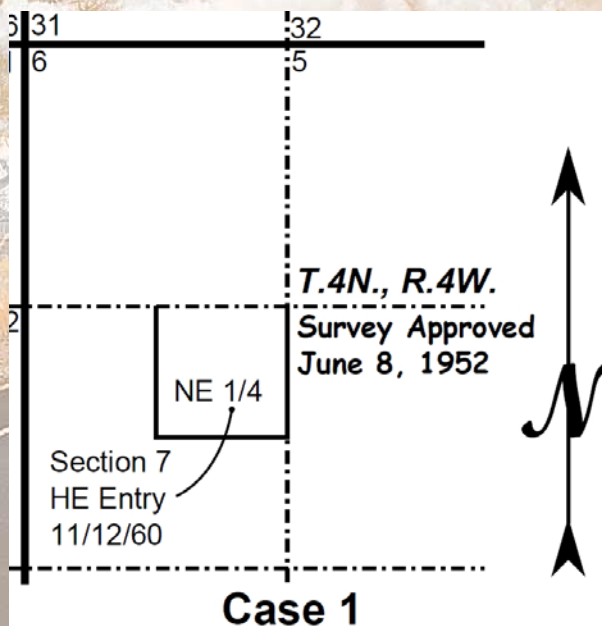
# Hypothetical SLE Cases

**4 TOWNSHIPS  
WITH VARYING  
SURVEY DATES**

**6 HYPOTHETICAL  
EXERCISES**



**NE 1/4 S7, T.4N., R.4W.**



**Case 1**

## THE FACTS

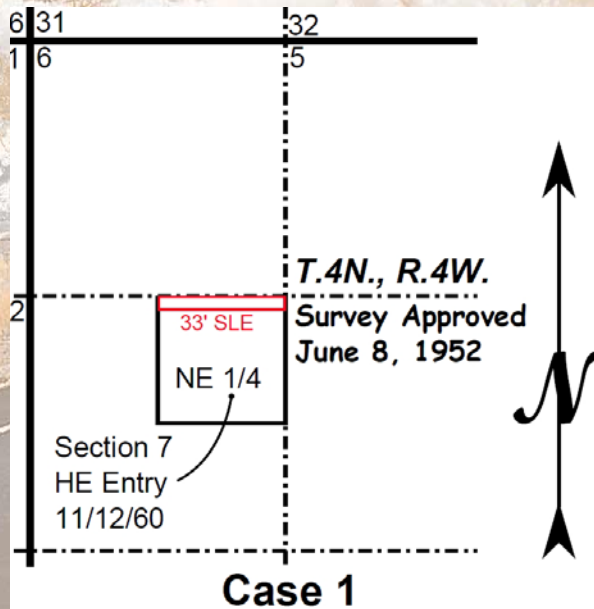
**SURVEY DATE: 6/8/52**

**RS-2477 ACCEPTANCE: 3/21/53**

**LAND RESERVED: 11/12/60**

**IS THERE AN SLE ON THE NORTH BOUNDARY?**

## NE ¼ S7, T.4N., R.4W.



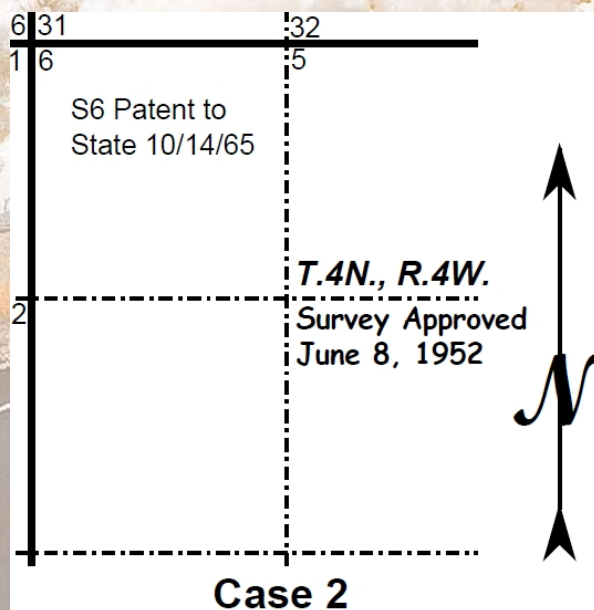
WHEN THE SURVEY WAS APPROVED IN 1952, THE RS-2477 GRANT ACCEPTANCE HAD BEEN REPEALED.

THE RS-2477 ACCEPTANCE WAS REINSTATED ON MARCH 21, 1953.

AS THE RS-2477 ACCEPTANCE HAD PRECEDED THE HOMESTEAD ENTRY DATE IN 1960, THERE WOULD BE A 33' (2-ROD) WIDE SLE ON THE NORTH SECTION LINE BOUNDARY.

**A 33' FEDERAL SLE EXISTS ON THE N. BOUNDARY**

## Section 6, T.4N., R.4W.



### THE FACTS

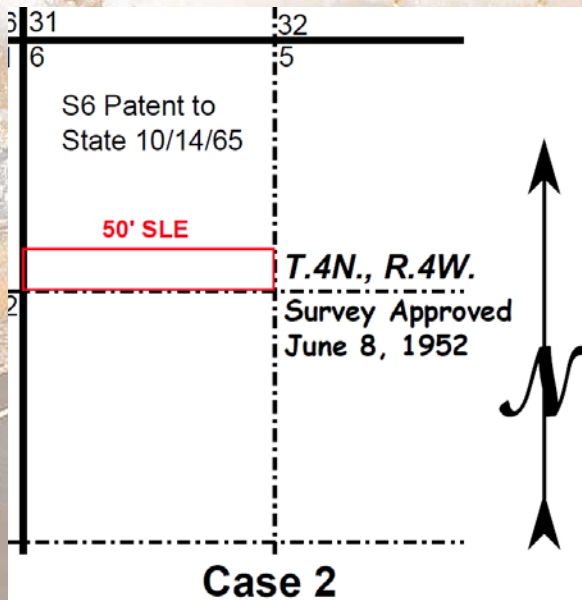
SURVEY DATE: 6/8/52

CH. 123 SLA 1951: 3/26/51

PATENT TO STATE: 10/14/65

**IS THERE AN SLE ON THE SOUTH BOUNDARY?**

# Section 6, T.4N., R.4W.



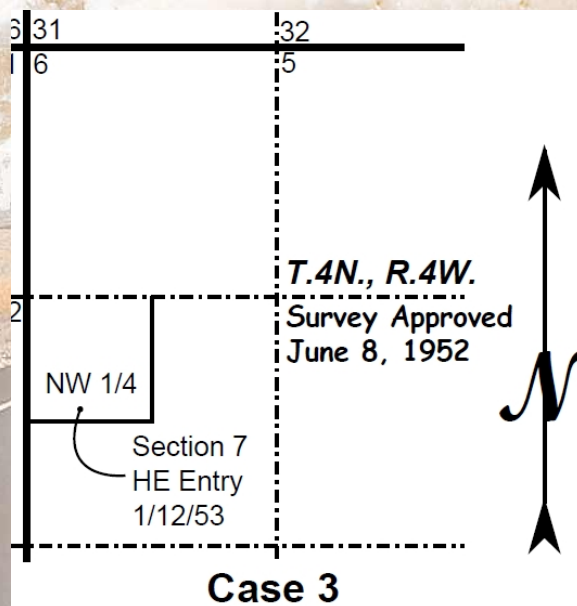
When the Survey Was Approved in 1952, The RS-2477 Grant Acceptance Had Been Repealed.

On March 26, 1951 (and Prior to Survey Approval) Ch. 123 SLA 1951 Provided For 100' Wide State/Territorial SLEs.

Once the State Received Patent in 1965, the Land Was Subject to a 100' Wide SLE.

A 50' State SLE Exists on the S. Boundary

# NW ¼ S7, T.4N., R.4W.



## THE FACTS

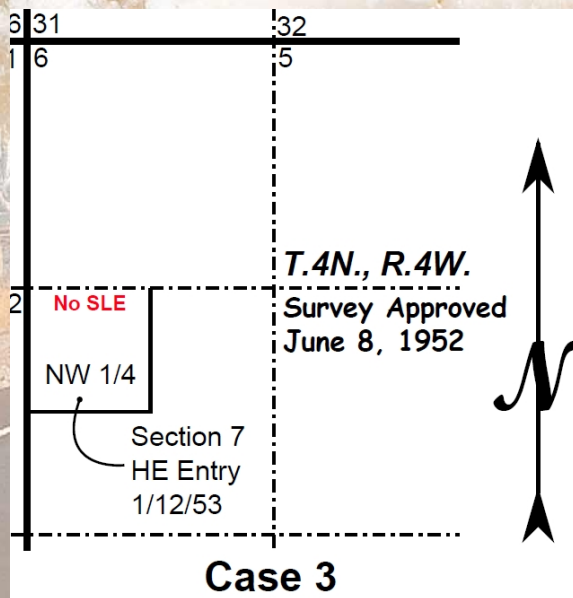
SURVEY DATE: 6/8/52

ACCEPTANCE: NOT UNTIL 3/21/53

LAND RESERVED: 1/12/53

IS THERE AN SLE ON THE NORTH BOUNDARY?

# NW ¼ S7, T.4N.,R.4W.



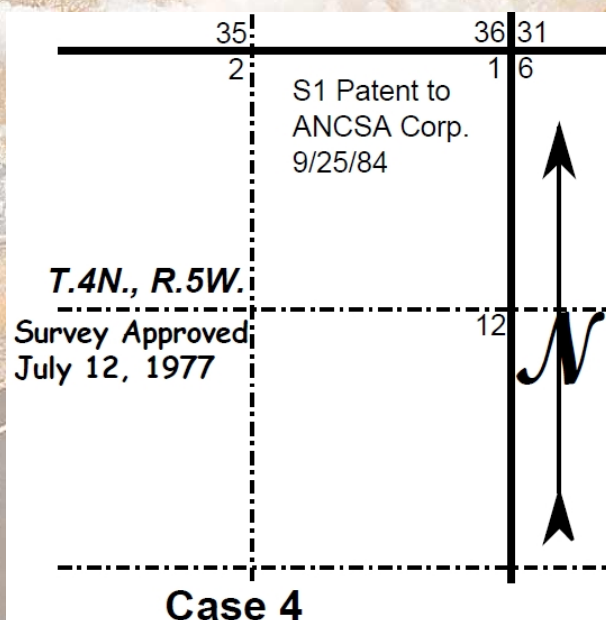
WHEN THE SURVEY WAS APPROVED IN 1952, THE RS-2477 GRANT ACCEPTANCE HAD BEEN REPEALED.

THE RS-2477 ACCEPTANCE WAS REINSTATED ON MARCH 21, 1953.

AS THE SURVEY WAS APPROVED DURING THE PERIOD OF NON-ACCEPTANCE AND THE HOMESTEAD ENTRY DATE PRECEDED THE RS-2477 ACCEPTANCE IN MARCH OF 1953, AN SLE COULD NOT EXIST ON THE NORTH SECTION LINE BOUNDARY.

THERE IS NO SLE ON THE NORTHERLY BOUNDARY

# Section 1, T.4N.,R.5W.



## THE FACTS

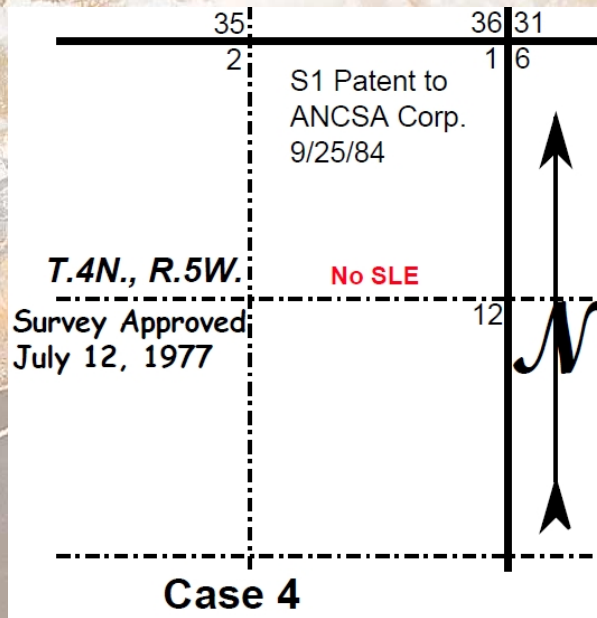
SURVEY DATE: 7/12/77

RS-2477 ACCEPTANCE: 3/21/53

ANCSA LAND PATENT: 9/25/84

IS THERE AN SLE ON THE SOUTH BOUNDARY?

# Section 1, T.4N., R.5W.



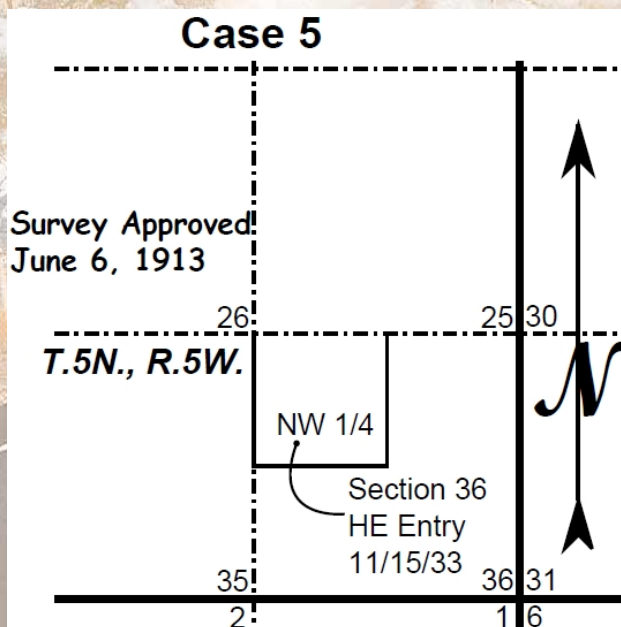
WHEN THE SURVEY WAS APPROVED IN 1977, THE RS-2477 GRANT OFFER HAD ALREADY BEEN REPEALED BY TITLE VII OF FLPMA ON OCTOBER 21, 1976.

AS THE RS-2477 OFFER WAS NOT IN PLACE AT THE TIME OF SURVEY APPROVAL, THERE COULD BE NO SLE ON THE SOUTHERLY BOUNDARY.

FOR AN SLE TO EXIST, THE SURVEY APPROVAL WOULD HAVE MOST LIKELY BEEN NECESSARY PRIOR TO DECEMBER 14, 1968.

THERE IS NO SLE ON THE SOUTHERLY BOUNDARY

# NW ¼ S36, T.5N., R.5W.



## THE FACTS

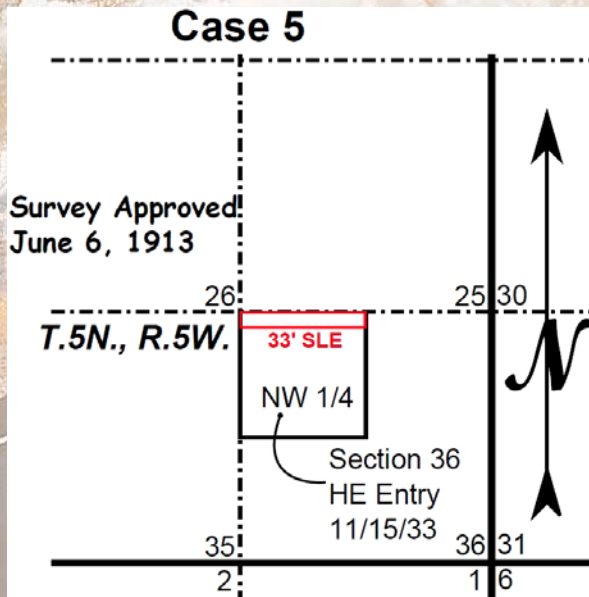
SURVEY DATE: 6/6/13

RS-2477 ACCEPTANCE: 4/6/23

LAND RESERVED: 11/15/33

IS THERE AN SLE ON THE NORTH BOUNDARY?

# NW 1/4 S36, T.5N., R.5W.



WHEN THE SURVEY WAS APPROVED IN 1913, THE RS-2477 GRANT HAD NOT YET BEEN ACCEPTED.

~

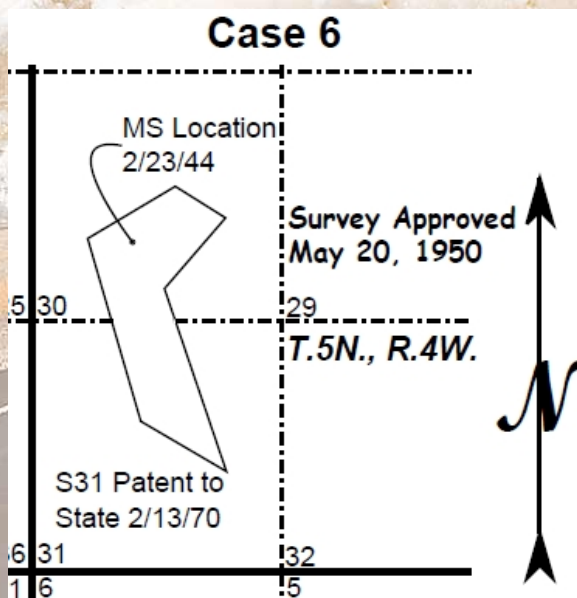
THE TERRITORY ACCEPTED THE RS-2477 GRANT ON APRIL 6, 1923.

~

AS THE SUBJECT PROPERTY WAS UNRESERVED ON THE DATE OF RS-2477 ACCEPTANCE, THERE WOULD BE A 33' (2-ROD) WIDE SLE ON THE NORTH SECTION LINE BOUNDARY.

**A 33' FEDERAL SLE EXISTS ON THE N. BOUNDARY**

# Section 31, T.5N., R.4W.



## THE FACTS

TWP. SURVEY DATE: 5/20/50

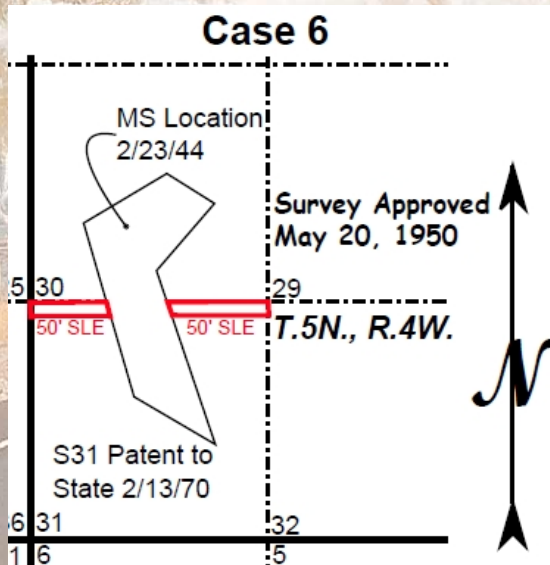
ACCEPTANCE: NOT UNTIL 3/21/53

LAND RESERVED - MINERAL  
SURVEY LOCATION: 2/23/44

PATENT TO STATE: 2/13/70

**IS THERE AN SLE ON THE NORTH BOUNDARY?**

# Section 31, T.5N., R.4W.



WHEN THE SURVEY WAS APPROVED IN 1950, THE RS-2477 GRANT ACCEPTANCE HAD BEEN REPEALED. EVEN IF THE ACCEPTANCE HAD BEEN IN PLACE, THE MS LOCATION DATE IN 1944 HAD PRECEDED THE TOWNSHIP SURVEY APPROVAL DATE.

ON MARCH 26, 1951 CH. 123 SLA 1951 PROVIDED FOR 100' WIDE STATE/TERRITORIAL SLEs.

ONCE THE STATE RECEIVED PATENT IN 1970, THE LAND (EXCLUDING THE PATENTED MINERAL SURVEY) WAS SUBJECT TO A 100' WIDE SLE.

**A 50' STATE SLE EXISTS ALONG PART OF THE  
NORTHERLY BOUNDARY**

When You Come  
To A Fork In The  
Road, Take It...

**The End**

