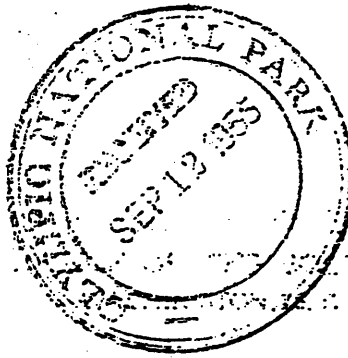


To: Supt. Olympic
 Date Forwarded 9/9/55
 By: Region Four Office



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August 30, 1955

Memorandum

To: Director, National Park Service
 From: Acting Assistant Solicitor, National Parks
 Subject: Quitclaim Deed From Commercial Salvage Company Covering Portions of the Abandoned Port Angeles Western Railroad Right-of-Way, Olympic National Park and Olympic National Forest

We have carefully reviewed the unrecorded quitclaim deed, dated July 30, 1954, from the Commercial Salvage Company to the United States of America, covering portions of the abandoned Port Angeles Western Railroad Company's right-of-way, and related papers, transmitted to you with Acting Regional Director Maier's memorandum of June 15. Your Office has requested that these documents be sent to the Attorney General for a title opinion prior to recording of the deed.

Before the title papers are forwarded to the Department of Justice, we wish to call your attention to the following matters:

1. It appears that the Port Angeles Western Railroad Company acquired its grant under the acts of March 3, 1875 (18 Stat. 482), and March 3, 1899 (30 Stat. 1233). See Solicitor's Opinion M-30265 of June 16, 1939. As pointed out in former Chief Counsel Price's memorandum of December 2, 1953, to the Superintendent of the Park, such a grant constitutes merely an easement for railroad purposes. See Great Northern Railway Company v. United States, 315 U. S. 262. Any use inconsistent with the purposes for which the grant was made would render it subject to forfeiture. On April 7, 1954, a suggested draft of a form of relinquishment by the Company of the grant of right-of-way was forwarded to Superintendent Overly. However, Mr. Overly advises in his memorandum of May 19, 1955, that the Commercial Salvage Company, which purchased the assets of the defunct railroad company at a public auction on December 15, 1953, declined to sign the relinquishment but did execute the quitclaim deed.

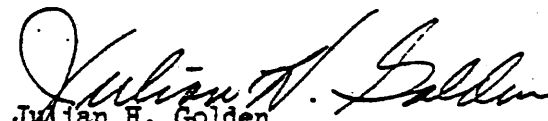
Since the Port Angeles Western Railroad Company had abandoned the right-of-way, it is doubtful whether the purchaser at the public auction acquired any legal title insofar as the right-of-way over Government lands may be concerned. It follows that the quitclaim deed from the Commercial Salvage Company could not convey any legal title to the United

States as to such right-of-way. However, in my opinion the quitclaim deed may be treated as a relinquishment of the grant of right-of-way for the purpose of clearing the record. The Bureau of Land Management should be informed of the relinquishment in order that its records may be corrected accordingly.

2. Where the railroad company acquired only an easement for railroad purposes across privately-owned lands, it appears that upon abandonment of the right-of-way the easement merged with the fee title and the quitclaim deed could convey no real interest in such lands to the United States. Mr. Overly suggests that the United States might execute a quitclaim deed to the landowners to remove the cloud on the title. We doubt whether such a deed would have any legal effect. If and when the private lands are acquired by the United States, the deed from the Commercial Salvage Company would serve to remove any objection to the title arising from the prior conveyance of a railroad easement to the Port Angeles Western Railroad Company. As to the lands acquired and owned by the railroad company in fee, the deed from the Commercial Salvage Company would, of course, have the effect of conveying all of the right, title, and interest acquired by it at the public sale to the United States.

3. The usual reports on possessory rights should be furnished by the Superintendent before the title papers are sent to the Department of Justice. Also, we should be furnished maps showing the abandoned railroad right-of-way and fee title lands involved in this transaction.

Upon receipt of the above data, the papers will be transmitted to the Department of Justice for title opinion.


Julian H. Golden
Acting Assistant Solicitor
National Parks

✓
Copy referred to Region Four
by the Director's SECS,
Lands Branch Date 9/1/55

Of course, as to any lands the railroad company owned in fee, the deed from the Commercial Salvage Company would have the effect of conveying all of the right, title, and interest acquired by it at the public sale to the United States.

According to a title report prepared by the Clallam County Title Company in May 1955, the right-of-way in Lots 5 and 6, Section 14, Township 30 North, Range 9 West, W. M., is merely an easement across privately owned lands. Therefore, it is our opinion that the former right-of-way has merged with the fee ownership of the adjoining lands at this location and that the present owner of this adjoining land is correct in his belief that he is now the owner of the right-of-way.

We appreciate your interest in this matter. Please call on us whenever we may render any assistance.

Sincerely yours,

(SGD) FRED G. WAHL

Acting Secretary of the Interior

Hon. Jack Westland
House of Representatives
Washington 25, D. C.

Copy to: ✓ Regional Director, Region Four (2), with copy of Representative Westland's letter of March 8 (Advance copies)



United States Department of the Interior

OFFICE OF THE SOLICITOR
PORTLAND REGION, 1002 N. E. HOLLADAY ST.
P. O. Box 3621, Portland, Oregon 97208

July 24, 1974

In reply refer to:

Memorandum

To: Regional Director, Pacific Northwest Region, National Park Service, Seattle

From: Office of the Regional Solicitor, Portland

Subject: Title of the United States in the Port Angeles and Western Railroad Right of Way through Lots 9 and 10, Frank Anderson's Subdivision, Olympic National Park

You requested that we review the title owned by the United States in the above-described land. This request came about as a result of a letter from Attorney Bart G. Irwin, claiming that his clients are the owners of Lots 9 and 11 of the Frank Anderson's Subdivision and that the United States intended to release its interest in the right-of-way through these lots. He requests that the United States "remove this cloud" from his clients' land.

For the purpose of review, you gave us your file covering the acquisition of this railroad right-of-way by the United States. After review of this file and the title documents contained therein, we are of the opinion that the United States owns the right-of-way through Lots 9 and 11 in fee, and that there has never been any intent to transfer this fee title. A brief review of the title will show the basis upon which we have based our opinion.

1. In 1908, Frank and Mary Anderson filed the plat of Frank Anderson's Subdivision, including Lots 9 and 11. According to the plat, the subdivision was within Government Lot 7, Section 14, Township 30 North, Range 9 West, W.M. Actually, a part of Lots 9 and 10 and all of Lot 11 are within Government Lot 6. We examined the plats of this section in the Land Office of the Bureau of Land Management and, although they are very faint, nevertheless, they bear this out. However, we do not deem this to be a defect in title since the Frank Andersons' owned both Government Lots 6 and 7 at the time the plat was filed and the exact location of Lots 9 and 11 are clearly shown on the subdivision plat.

2. By deed dated January 3, 1911, Frank and Mary Anderson conveyed Lot 10 of Frank Anderson's Subdivision to Mrs. J. H. Peterson. Therefore, we are not concerned with Lot 10.

3. By deed dated December 5, 1918, Mary Anderson, a widow, conveyed to Siems, Cary-H.S. Kerbaugh Corp. certain land, including a part of Lots 9 and 11 of Frank Anderson's Subdivision. This deed is recorded in Volume 102 at Page 24 of the Clallam County Deed Records. The conveyance of tracts in these two lots are without restriction or limitation except for the reservation of the shorelands lying in front of, adjacent to, or abutting the tracts. Therefore, by this conveyance, these two tracts in Lots 9 and 11 passed to the grantee in fee. It is noted that the first part of the description in this deed conveys a railroad right-of-way over and across Lots 5 and 6 of Section 14, Township 30 North, Range 9 West, W.M. It could be argued that this conveyed a fee title also, since no limitation of the estate conveyed is given. A "right-of-way" can describe a fee as well as an easement. However, in view of the interpretations of this part of the deed, as later discussed, there is no need to dwell further on this issue. It is also noted that the description describes the center line of the "railway as the same is now located and constructed." Evidently the railroad must have been built prior to 1918 and the deed was obtained to perfect its title to the railroad land.

4. By deed dated September 13, 1945, Mary L. Anderson, a widow, conveyed to Petrus G. Pearson and Helen M. Pearson Government Lot 6, Section 14, Township 30 North, Range 9 West, W.M., "EXCEPT part heretofore conveyed for railroad right-of-way by deed recorded in Volume 102 of Deeds, Page 24, records of said county." The deed reference is to the deed to Siems, Cary-H.S. Kerbaugh Corp., above mentioned. Consequently, the title which passed to the Pearsons excepted the tracts previously conveyed in fee to this company. At the same time, the Andersons conveyed to the Pearsons "all shorelands of the second class" which had been excepted out of the deed to Siems, Cary-H.S. Kerbaugh Corp.

5. Due to delinquent taxes, Clallam County foreclosed upon that portion of Lots 9 and 11 of Frank Anderson's Subdivision outside the railroad right-of-way, and, by tax deed dated December 21, 1946, the county sold these lots "except right of way" to William J. Wineberg. Since there is no showing to the contrary, we must assume that the taxes were not delinquent on the lands owned by the railroad in these lots and, consequently, they were not included in the tax foreclosure. This assumption is apparently correct as evidenced by the title policy later issued to the United States as hereafter referred to.

6. By deed dated November 30, 1946, the United States Spruce Production Corporation conveyed to the United States "That certain railroad formerly known as Spruce Production Railroad No. 1, and now known as Port Angeles Western Railroad" as hereinafter described in the deed. The description includes the railroad "through Sections Fifteen (15) and Fourteen (14), Township Thirty (30) North, Range Nine (9) West, Willamette Meridian."

7. The Chief Counsel of the National Park Service advised the Superintendent of the Olympic National Park by memorandum of December 2, 1953, that the Port Angeles Western Railroad acquired an easement across federal land under the Acts of March 3, 1875 (18 Stat. 482) and March 3, 1899 (30 Stat. 1222). In discussing the sale to the United States he stated:

"The foregoing, of course, is applicable only to the portion of the right-of-way crossing Federal land. The land acquired by purchase from private owners is no doubt owned in fee"

A similar conclusion was reached by the Assistant Solicitor when he reviewed the title acquired by the United States from the Commercial Salvage Company as hereafter set out. In his memorandum to the Director of the National Park Service, dated August 30, 1955, he stated:

"As to the lands acquired and owned by the railroad company in fee, the deed from the Commercial Salvage Company would, of course, have the effect of conveying all of the right, title, and interest acquired by it at the public sale to the United States."

8. By Quitclaim Deed and Assignment dated July 30, 1954, the Commercial Salvage Company conveyed, quitclaimed, and assigned to the United States all its interest in the property described therein. The description contains Parcel 7b which includes all that portion of Lots 9 and 11 of Anderson's Subdivision as described in Deed 102, Page 24, except the shorelands. It also contains other parcels, both fee and easement. For example, Parcel 7a is described as an easement across the Government Lots 5 and 6. Your file does not reveal the purpose of the quitclaim deed so we assume that it was to clear title in the United States.

9. By Certificate of Title No. M-11976, dated July 25, 1958, the Washington Title Insurance Company of Seattle, Washington, certified that the land described therein was "indefeasibly vested in

fee simple of record in the United States of America." Among the lands described therein is Parcel 1, which includes all that portion of Lots 9 and 11 of Frank Anderson's Subdivision as described in Deed 102, Page 24, except shorelands.

10. Based upon the above Certificate of Title, the Attorney General of the United States approved the title thereto, stating:

"Since the title certificate [Certificate No. M-11976, which included the railroad tracts in Lots 9 and 11] covers only those parcels of land described in the quitclaim deed which are being acquired in fee, this opinion does not relate to any of the parcels therein described which constitute easements for railroad rights of way."

11. On March 8, 1957, Congressman Jack Westland, in behalf of Petrus Pearson (see Note 4 above) wrote to the Secretary of the Interior concerning the title of the United States in the railroad right-of-way as it crossed Government Lots 5 and 6, Section 14, Township 30 North, Range 9 West, W.M. On March 26, 1957, the Secretary replied that where the railroad acquired only an easement, upon abandonment, it passed to the fee owner; however, where the railroad owned the land in fee, such title had been acquired by the United States.

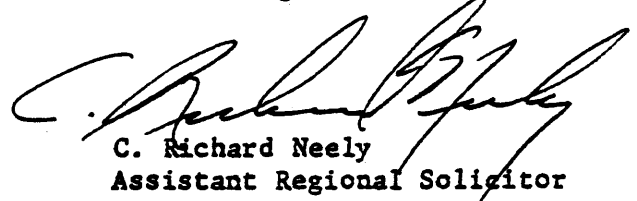
12. Congressman Westland, by letter of February 24, 1958, made a further request to the Secretary for a release of the easement across Government Lots 5 and 6 in behalf of Mr. Petrus Pearson. As a result, the National Park Service issued a certificate of disclaimer, dated December 5, 1958, covering "Parcel 7a." It should be noted that Parcel 7a was listed as an easement in the deed from the Commercial Salvage Company, while Parcel 7b, which included Lots 9 and 11 of the Frank Anderson's Subdivision, was described as a fee. It may be argued that, since Lot 11 and part of Lot 9 actually lay in Government Lot 6 instead of Government Lot 7, the United States intended to release the fee title it received in Parcel 7b (Lots 9 and 11). There is no merit in this contention for several reasons. First, the disclaimer especially includes only Parcel 7a and not Parcel 7b. Secondly, the chain of title to those who claim an interest in Lots 9 and 11 is not through the Pearsons. Title to Lots 9 and 11 is derived solely through the chain from the Andersons, the railroad, and the tax foreclosure. It is evident that all the Secretary intended by the 1958 disclaimer was, at the request of Congressman Westland, to disclaim any interest the United States had in the Pearsons' land which consisted of Government Lots 5 and 6, excluding Anderson's Subdivision.

13. Your file also contains an Indorsement to Policy No. M-11976, dated September 7, 1971, from the Pioneer National Title Insurance Company insuring a fee simple estate in the United States to all that portion of Lots 9 and 11, Anderson's Subdivision as conveyed by Deed 102 at Page 24.

From a review of the above, we are of the opinion that the United States has a fee simple title in that tract of land in Lots 9 and 11 of Frank Anderson's Subdivision as described in Volume 102 at Page 24 of the Clallam County Deed Records. This being the case, you are without authority to release this title to the clients of Bart G. Irwin as requested in his letter of June 21, 1974. If these tracts in Lots 9 and 11 are to be disposed of, it must be accomplished in accordance with applicable laws and regulations concerning the disposal of federal lands within the Olympic National Park.

We herewith return your file.

4
For the Regional Solicitor



C. Richard Neely
Assistant Regional Solicitor

Enclosure



United States Department of the Interior

OFFICE OF THE SOLICITOR
PORTLAND REGION, 1002 N. E. HOLLADAY ST.
P. O. Box 3621, Portland, Oregon 97208

Rec'd 8/8/74
Rpt
W. J. K.
L. J. K.
W. J. K.

August 7, 1974

In reply refer to:

Memorandum

TO: Regional Director, Pacific Northwest Region,
National Park Service, Seattle

From: Office of the Regional Solicitor, Portland

Subject: Title of the United States in the Port Angeles and Western
Railroad Right of Way through Lots 9 and 11, Frank Anderson's
Subdivision, Olympic National Park

By memorandum of July 24, 1974, we gave you a detailed review of the title of the United States to the above land. You have asked for a summary of this title information along with our conclusions.

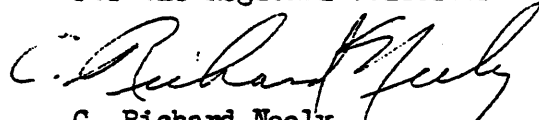
The United States acquired title to the railroad tracts in Lots 9 and 11 of Frank Anderson's Subdivision by deeds from the United States Spruce Production Corporation, dated November 30, 1946, and from the Commercial Salvage Company, dated July 30, 1954. The above tracts are described as Parcel 7b in the latter deed. This title acquired by the United States was derived through a deed from the Andersons to Siems, Gary-H. S. Kerbaugh Corp., dated December 5, 1918, and recorded in Volume 102 at page 24, Clallam County Deed Records. The Washington Title Insurance Company, be Certificate of Title No. M-11976, dated July 25, 1958, with an endorsement dated September 7, 1971, insured the fee simple title to the above two tracts in Lots 9 and 11 in the United States. Based upon this certificate of title, the Attorney General approved the title to these two tracts. We, therefore, conclude that the United States owns a fee simple title in the land described as Parcel 7b.

According to the Attorney General, some of the parcels obtained by the United States were only easements and were lost through abandonment. One such easement was obtained through Government Lots 5 and 6, except the part in Frank Anderson's Subdivision (Parcel 7a of the above deed). At the request of Congressman Jack Westland in behalf of Petrus Pearson, the owner of the fee title to Government Lots 5

and 6, the National Park Service disclaimed any interest therein by disclaimer of December 5, 1958. However, no such disclaimer can be given for title owned by the United States in fee.

There may be other instances where the United States has acquired a fee title across private lands by virtue of the above two deeds. However, each title must be searched separately, and, consequently, our comments here are restricted solely to Parcel 7b covering Lots 9 and 11 of Frank Anderson's Subdivision.

For the Regional Solicitor



C. Richard Neely
Assistant Regional Solicitor