

Subject: McCarthy Road

Date: Thu, 26 Aug 1999 15:17:22 -0800

From: "John F. Bennett" <johnf_bennett@dot.state.ak.us>

Organization: Alaska DOT&PF

To: "Black, Craig" <Craig_Black@law.state.ak.us>

Craig, I'm about a month behind on responding to your letter regarding the Chitina-McCarthy Road ROW question. This subject has been close at hand recently due to a lot of activity at both the Chitina and McCarthy ends of the road and our continuing McCarthy road location study for a proposed upgrade to the entire 60 mile length. I was going through my materials trying to get a bit organized and noted that I had neither the June 16, 1994 Dahl memo nor the following 34 page response to Campbells request to revisit the question. I suspect that they were never forwarded to our Northern Region offices. Given the direction that those opinions were heading and the controversy over this subject, you suggest that we reconsider whether we still want to ask the question. Unfortunately, the controversy isn't about to go away. In fact the increased activity in the Chitina-McCarthy area that we either be prepared to defend the 200' width or figure out how we will deal with the conflicts if we concede to the IBLA 100' width.

There are a couple of issues with the IBLA decision that I haven't been able to accept yet either because I don't completely understand them or because I'm not convinced that we have considered all of the arguments against the decision. However, if Dahl's memo's addressed the arguments in the IBLA decision, then possibly I could satisfy my questions. Is it possible to get a copy of the June 16, 1994 - 9 page memo and his subsequent 34 page response?

If those memos push me further into accepting the IBLA logic, then I will recommend rescinding the request for an opinion and work with our local transportation AG's as to how we will deal with the conflicts created by 50+ years of asserting a 200' wide ROW.

The questions we will have will involve chain of title, claim of a an easement by prescription, and others. We are dealing with one claim now that we misrepresented the existing ROW 20 some years ago to a developer and they subsequently dedicated the full 200 foot width on their subdivision plat. We've had situations over the years where the Department has gone back and successfully asserted a wider RoW than the adjoining property owners had believed to exist. Its much more painful to have to accept a narrower RoW.

Thanks, JohnB