# UNITED STATES DISTRICT COURT

#### DISTRICT OF ALASKA AT ANCHORAGE

SIERRA CLUB, a non-profit corporation,
ALASKA CONSERVATION SOCIETY, a
non-profit corporation,

Plaintiff,

V.

CLAUDE S. BRINEGAR, individually, and as Secretary of Transportation; R. R. BARTELSMEYER, individually, and as Acting Federal Highway Administrator; LOUIS E. LYBECKER, individually, and as Regional Federal Highway Administrator for Region 10 of the Federal Highway Administration, U.S. Department of Transportation; GENE HANNA, individually, and as Division Engineer, Alaska Division Federal Highway Administration; BRUCE CAMPBELL, individually, and as Commissioner of Alaska Department of Highways; and TOM YOUNG, individually, and as District Highway Engineer, Alaska Department of Highways,

Defendants.

No. A-33-73

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## AFFIDAVIT OF BRUCE CAMPBELL

STATE OF ALASKA )
) ss.
FIRST JUDICIAL DISTRICT )

Bruce Campbell being first duly sworn deposes and states:

1. I am the Commissioner of Highways for the State of Alaska serving under the appointment of the Honorable William A. Egan, Governor of the State of Alaska. I was appointed Commissioner of Highways on February 1, 1971, and in such capacity I am responsible for the planning, construction, maintenance, protection and control of the State Highway System. From 1952 until 1967 I served in various capacities with the Alaska Department of Highways, and its predecessor organizations, the Alaska Road Commission (Department of

ATTORNEY GENERAL, STATE OF ALASKA STATE CAPITOL POUCH K, JUNEAU, ALASKA 99801 PHONE \$66.5301

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Interior) and Bureau of Public Roads (Department of Commerce), including serving as the Acting Commissioner of Highways intermittently during the period from 1962 to 1967. In my capacity as Chief Executive Officer of the Alaska Department of Highways, and because of the other positions I have held within the Department of Highways, I am familiar with the highway system in the Cordova, Alaska area, from an historic standpoint, and I am also familiar with the current status of the highway as well as future highway plans and proposals.

### HISTORY OF THE RAILROAD BED

- 2. The City of Cordova was founded primarily as a deep-water shipping port to service the Kennecott Mines lying some 196 miles into the Interior, near McCarthy, Alaska. Cordova was ultimately selected as the southern terminus of the Copper River and Northwestern Railway Company which ran from Cordova along the Copper River into the Kennecott mines in the McCarthy area. The railroad proceeded out of Cordova and reached the delta of the Copper River at approximately Mile 27, i.e. 27 miles from Cordova. The Copper River at this point forms a delta of many channels. The railroad crossed the various channels to the easterly bank and followed a path basically upstream to the "Million Dollar Bridge" which is located at approximately Mile 49 on the highway. The railroad crossed the Copper River on the "Million Dollar Bridge" and then proceeded on the westerly side of the river to Chitina at Mile 131. Chitina the railroad crossed the Copper River again and proceeded easterly to McCarthy and the Kennecott mines. In constructing the railroad it was necessary to traverse various river channels and meanders which required the construction of numerous bridges.
- 3. Pursuant to the terms of an Act of Congress (May 14, 1898) (30 Stat. 409) the Copper River and Northwestern Railway Company acquired a 200 feet wide right-of-way by constructing and operating a railroad from Cordova to Chitina to McCarthy and Kennicott. Exhibit A.

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- 4. In 1932, pursuant to a June 30 Act of Congress (47 Stat. 446)
  the authority, responsibility and duty for constructing and maintaining the roads
  and trails of Alaska was transferred to the Department of the Interior. Exhibit B.
- 5. The agency within the Department of Interior which accepted the trail and road responsibilities in Alaska was the Alaska Road Commission.
- 6. In 1939 the railroad ceased its operations after carrying approximately \$100,000,000 worth of copper ore to the seaport at Cordova. The Alaska Road Commission thereafter took over the railroad and began operating a public tramway between Chitina and McCarthy. Exhibit C.
- 7. In 1941 the U.S. Congress reviewed the matter of the railroad right-of-way. The Senate Committee on Territories and Insular Affairs issued Senate Report No. 375 (June 5, 1941) which summarizes the issues then under consideration by Congress. Exhibit D.
- 8. The Senate Committee recommended that S. 1289 do pass. On June 9, 1941 the Senate passed S. 1289 with a minor amendment and the bill as passed is printed in the Congressional Record Senate, page 4870. Exhibit E.
- 9. The bill was approved on July 15, 1941 and is located as 55 Stat.
  594. Exhibit F.
- 10. The special 1941 Act authorized the Secretary of Interior, who was then the government official responsible for roads and trails in Alaska, to acquire the railroad right-of-way for use as a "public highway, tramroad, or tramway...." Second, the special Act provided that the future use of the right-of-way was to be governed by the 1932 Act (47 Stat. 446) transferring road and trail responsibilities in Alaska to the Department of the Interior from the War Department. Finally, the Act stated that that special Act was paramount to any other Act of Congress. Furthermore, the 1941 special Act provided specific exemption from the 1922 Act (42 Stat. 414) which provided that abandoned railroad rights of way should revert to the adjoining landowner if not in a municipality, or else become a part of the public domain.

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- 11. The Alaska Road Commission continued its use of the rightof-way uninterrupted from the time the Railroad ceased operations until road and trail responsibilities in Alaska were transferred in 1956. The Alaska Road Commission expended funds on the highway. Exhibits G1 - G32.
- 12. On March 29, 1945, pursuant to the 1941 special Act of Congress, the railroad relinquished its interest to the Secretary of Interior and its interest was formally accepted by the federal government on May 11, 1945. Exhibits H & I.
- 13. At various points in time the Department of the Interior formally recognized the existence of highways and roads in Alaska which were located on public lands. Public Land Order 601 (dated August 10, 1949) memorializes the Alaska "Through Roads" and "Feeder Roads" by name, and states that "All roads not classified as Through Roads or Feeder Roads, established or maintained under the jurisdiction of the Secretary of the Interior" shall be known as "Local Roads." Exhibit J.
- 14. Public Land Order 601 was revised and up-dated on October 15, 1951 by Order No. 2665 of the Secretary of the Interior. Exhibit K.
- 15. In 1953 and 1954, the Department of the Interior requested additional appropriations for construction work on the Copper River Highway. Exhibits Ll - L6.
- 16. On September 15, 1956, the Secretary of the Interior promulgated Amendment No. 2 to the 1951 Order (2665) to declare that the Copper River Highway was to be known as a "Through Road" with a width of 150 feet on each side of the center line of the road. Exhibits M1 - M2.
- 17. The "repair, maintenance and construction of roads, tramways, ferries, bridges, trails and other works in Alaska" were transferred to the Department of Commerce, Bureau of Public Roads by the June 29, 1956 Act of Congress (70 Stat. 377). Exhibit M3.

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18. On December 11, 1957 the Department of the Interior and the Bureau of Public Roads, Department of Commerce signed a document settling by stipulation several disputes in federal court over the scrap iron remaining from the old railroad. Exhibit N.

On page 2 of that document the following is stated in a summary of the history and status of the right-of-way up to that time: "pursuant to the terms of the Federal-Aid Highway Act of 1956 (70 Stat. 374), the Bureau of Public Roads, United States Department of Commerce, assumed jurisdiction over the aforesaid abandoned former right-of-way of the Copper River and Northwestern Railroad." The Director of the Bureau of Land Management, Edward Woozley, a party to the suit, on page 6 of that document, explicitly concurred in that statement and the document as a whole.

Furthermore, stipulation 8, page 5, of that document provided as follows: "The Government is constructing a highway progressively along the general route of said abandoned former right-of-way of the Railroad. If any rails with respect to which Grevnin, et al., have the authority and right to remove hereunder lie in the immediate path of construction work, the Government and its designated agents or contractors shall have the right to cover, remove or use such rails, and with respect to such rails all rights of Grevnin, et al., hereunder shall end."

Stipulation 6, page 5, of that document provided that "all rails must be fully and completely removed from the Government lands by the date of ending of said seven year period and any rails not so removed shall thereupon become the property of the Government."

Finally on page 6 of the document it is recited that it was further understood and agreed "That all rights to remove the rails granted herein to Grevnin, et al., shall not be subject to transfer or assignment, and the time period within which said rails may be removed shall not be renewed or extended."

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19. Subsection (a) of section 21 of the Alaska Omnibus Act,
(73 Stat. 141) (June 24, 1959) provided that the Secretary of Commerce was
to transfer "to the State of Alaska by appropriate conveyance all lands
or interests in lands, including buildings and fixtures, all personal property
, pertaining to roads in Alaska, which are owned, held or administered
by, or used by the Secretary in connection with the activities of the Bureau of
Public Roads in Alaska " Subsection (c) (1) provided "The State of Alaska
shall be responsible for the maintenance of roads, including bridges, tunnels,
and ferries, transferred to it under subsection (a) of this section, as long as
any such road is needed for highway purposes."

20. On June 30, 1959, the Secretary of Commerce implemented the mandate of the Alaska Omnibus Act in a series of conveyances and formally transferred roads, other properties, and scrap iron from the railroad to the State of Alaska. On July 2, 1959, Governor William A. Egan formally accepted the conveyances on behalf of the State of Alaska. Exhibits O., P.&Q.

The Copper River Highway was included in a conveyance of roads under the headings of FAS Nos. 850 and 851.

- 21. Since Statehood, the State of Alaska has maintained and improved the Copper River Highway. The State of Alaska has also sold a portion of the scrap iron from the old railroad. Exhibit R.
- 22. The Copper River Highway was damaged as a result of the Alaska Good Friday earthquake on March 27, 1964. Before the earthquake the following schedule summarizes some of the monies that were expended on the highway:

1.	Civil Aeronautics Administration	\$ 166,000.		
	(prior to 1950)			

- 2. Forest Highway Fund \$ 1,393,607. (1950 to 1960)
- 3. Alaska Road Commission \$ 3,903,127. (1949 to 1956)

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1 2	4. Bureau of Public Roads (1956 to 1960)	\$ 2,799,569.						
3	5. State of Alaska, Department of Highways	\$ 4,442,800. —————						
4	TOTAL	\$ 12,705,103.						
· 5	After the earthquake the State of Alaska began repairing the							
7	highway. The following is a schedule of the monies expended on the Copper							
8	River Highway since the earthquake:							
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	•		· ·					EXPENDED FUNDS		
PROJECT_NO.	AREA	PHASE	LEMGTH (Miles)	DATE AUTH.	LOCATION APPROVAL	DESIGN APPROVAL	COMPL. DATE	PRIOR TO 1970	1970 TO PRESENT	
S-0851(12)	Various area between Mile 49 to 75	PE R/N	10.0	8/28/59	10/20/62	10/20/62	0pen	271,044 1,162	60,515 144	
S-0851(17) S-0851(18)	Mile O Dock in Cordova Mile O Dock in Cordova	PE R/V U	4.0 1.366	7/7/60 5/24/61	7/7/60 7/7/60	7/7/60 7/7/60	5/28/65 8/17/67	181,051 135,257 13,139	Closed Closed Closed	
S-0851(19)	Cordova E. to Airport	CS PE CS	11.0	1/20/66	1/20/66	1/20/66	7/17/67	1,701,244 11,298 536,973	Closed -0- 240	
S-0851 (24)	Mile 15 to 18	PE R/M	3.2	8/25/61	8/25/61	8/25/61	9/14/67	102,431 3,746	Closed Closed	
S-0851(28)	Mile 14.7 E. of Cordova Northeast	CS	4.0	9/14/67	8/25/61	8/25/61	2/17/69	875,395	Closed	
S-0951(31) S-0851(32)	Mile 12 to 14 Woodworth Glacier Area	CS PE CS	1.0 17.0	10/6/67 9/12/69	7/7/67 9/9/70	7/7/67 9/9/70	9/26/68 Open	400,882 82,160 -0-	Closed 698,895 -0-	
S-0851(33) S-0851(34) S-0851(35) S-0851(36)	Mile 82 to 96 Cordova Ferry Access Mile 75 to 82 Mile 33 to 38	PE PE PE PE CS	14.0 0.4 7.0 9.5	9/12/69 12/29/69 2/4/70 3/2/71	7/21/72 12/29/69 9/22/72	7/21/72 12/29/69 9/22/72	Open Open Open Open	124 -0- -0- -0-	153,734 1,676 4,399 9,921 -0-	
ERF0-3(1)	Nile 5 to 13	PE CS	8.0	5/18/64	5/7/64	5/7/64	8/2/66	44,237 2,549,834	Closed	
ERFO-7(1)	At Nile 4.5	PE CS	II/A	6/10/64			8/2/66	4,029 140,059	Closed	
ER-38(1)	Mile 25.9 to 27.9 (Flagg Point Bridges)	PE CS	2.0	11/21/67	11/16/67	11/16/67	10/11/72	192,385	7,461,702	
ER-39(1)	Mile 27.9 to 38.1	PE CS	10.2	11/21/67	11/16/67	11/16/67	0pen	100,951	354,660 19,065	
ER-40(1)	Mile 38.1 to 49	PE R/V CS	3.7	11/21/67	11/16/67	11/16/67	0pen	78,933 -C- -O-	199,911 -C- -0-	
ER-1(1)	Temporary Repairs Immedi- ately After Earthquake on Copper River Highway Hile	PE CS	18.0	4/20/64			1964	519 123,447	· · · · · · · · · · · · · · · · · · ·	

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PE R iminary Engineering R/W Right-o ay CS Construction U Utilit

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Copper River Highway, retain amicable relations with citizens and federal agencies, and prevent later misunderstandings, the State of Alaska has obtained three confirmations of its right-of-way to the Copper River Highway. First, on February 28, 1963 the Bureau of Land Management confirmed the right-of-way between Mile 49 and Mile 59. Exhibit S. Second, the State of Alaska, in March and April of 1965, acquired quitclaim deeds from the heirs of Nels Hawkinson who may have had some property interest in 0.686 of an acre of land which the State of Alaska claimed. The will of Nels Hawkinson is attached as Exhibit T, and the quitclaim deeds of his heirs, as recorded in the Cordova Recording District, are attached as Exhibits U, V, and W. In addition, on June 5, 1969, the federal government confirmed the State of Alaska's rightofway through the Chugach National Forest, Cordova to Mile 39. Exhibit X.

#### NATURE OF THE CONTROVERSY

- 24. In 1972 the plaintiffs first indicated to me their interest in the Copper River Highway and demanded that I prepare an environmental impact statement for the highway. I agreed to do so, although I doubted it was necessary, and delivered to plaintiffs' counsel, on March 5, 1973 a preliminary draft environmental impact statement which was released to the general public on March 8. Exhibit Y. The plaintiffs filed this action on March 6, 1973.
- 25. On March 13, 1973 the federal government withdrew all its financial support for the new construction on the Copper River Highway that was planned for the calendar year 1973 and indicated that it would not approve any other actions until this litigation was resolved. The new construction planned for 1973 was designated ER 39(1) and S0851(36) and consisted of the building of eight new bridges in the delta area (Mile 33 Mile 38) whose total length would be .683 miles and the grading of the roadway between the new bridges consisting of 3.92 miles. The total new construction in the delta area was estimated to have cost about \$6.5 million, from federal disaster relief funds,

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and \$.5 million from federal secondary road funds for the grading. The planned new construction would not have passed through the Copper Delta Game Management Area established in 1962. The highway right of way is surrounded completely by National Forest Lands throughout the limits of the proposed project.

26. On April 4, 1973, I issued an addendum to the previous draft environmental impact statement and the statement now encompasses the entire Copper River Valley. Exhibit Z.

#### PUBLIC HEARINGS

- 27. On May 17, 1973 I caused to be held an additional public hearing in Cordova on the Copper River Highway to receive comments on location, design, environmental impact and any other comments on any aspect of the Copper River Highway. Notice of the meeting was prominently published in several newspapers.
- 28. Previously, my predecessors had caused to be published in the Cordova Times on May 22, June 13, and June 19, 1969, a notice of a combined corridor and design public hearing on the Tasnuna route. That public meeting was held, as announced, at Valdez on June 26, 1969. An additional public hearing was held at Cordova on June 17, 1969.
- 29. A notice affording the opportunity for a public hearing for future plans regarding Miles 75 to 82 of the Copper River Highway was published in the Valdez Copper Basin News in March, 1970 and the Cordova Times on March 12 and 19, 1970. Since no written requests for such a hearing were received from anyone, including the plaintiffs, a public hearing was not held.
- 30. I also caused to be published a notice affording the opportunity for a public hearing for future plans regarding Miles 28 to 42 of the Copper River Highway in the Valdez Copper Basin News and the Cordova Times on January 20 and 27, 1972. Again no requests for a hearing were received from anyone, including the plaintiffs, and therefore no hearing was held.

EARTHQUAKE DAMAGE

- 31. At the time of the Good Friday earthquake the Copper River
  Highway was complete to secondary road standards and traversable to Mile 49.

  That portion of the highway between Mile 49 and Mile 59 was then under contract,
  was nearly completed, and was traversable throughout its length. An access road
  had been constructed to about Mile 68 and was traversable. Surveys had been
  completed past Mile 75 where the survey line rejoined the railroad alignment.
- 32. After the earthquake the major priority and effort by the State of Alaska was the repair of the most heavily traveled roads in the urban areas and hence the state did not have an opportunity to do much work on the Copper River Highway past the airport at Mile 13, except to survey the damage, until 1965.
- 33. After the damage had been surveyed a feasibility study on the entire highway was undertaken. That study was completed in 1967 and is reproduced as Appendix VI in Exhibit Y. Due to that study it was decided that not only should the construction to upgrade the highway to secondary standards proceed as before the earthquake, but also that the road should branch off at Mile 82 to join up with the Richardson Highway, at Mile 22 of the Richardson Highway, by passing through the Tasnuna Valley.
- 34. Once this re-evaluation had been completed and a public hearing held, and due to the completion of other repair work in the urban areas, the state was able to proceed with the task of repairing the existing highway. The nature of the highway and damage made the repair necessarily slow. The repair could only commence from the lower part of the highway and each bridge that had been damaged had to be repaired in order to reach the next repair area. In short, the repairs of the upper portion of the highway had to await the repair of the lower areas.

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35. The lack of access to the upper portion of the highway prevented necessary routine maintenance activities to preserve the road and bridge investments in that area. The access problem preventing maintenance on the upper portion of the highway was essentially eliminated by the completion of the \$7,661,660.00 bridges at Flagg Point, Mile 27, in October, 1972.

#### MAINTENANCE AND REPAIR

- 36. When access to the upper portion of the Copper River Highway was essentially solved in October, 1972, the State of Alaska could then practicably maintain and repair the remainder of the road and hence the Department of Highway's statutory maintenance duties and responsibilities became particularly relevant. Those duties and responsibilities are as follows:
- a. Pursuant to AS 19.05.010 the Alaska Department of Highways has the "responsibility" to maintain, protect and control the state highway system. The department also has the "duty" to maintain, protect and control highways pursuant to AS 19.05.020. The legislature has given the department power to fulfill its responsibilities and duties in AS 19.05.040(11).
- b. The legislature has defined the Department's maintenance responsibility and duty in AS 19.05.130(9) in the following terms:

"maintenance" means the preservation of each type of highway, roadside structure and facility as nearly as possible in its original condition as constructed, or as subsequently improved, and the operation of highway facilities and services to provide satisfactory and safe highways.

- c. The statutory responsibility and duty to maintain the Copper River Highway was reaffirmed and declared to be a high priority by the Alaska Legislature on April 9, 1973 in Senate Concurrent Resolution No. 29. Exhibit AA.
- 37. Normal routine maintenance on a road such as the Copper River Highway is approximately \$2,500 per mile per year when such maintenance is done each year. Since the upper portion of the Copper River Highway had

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not been maintained for nearly 9 years and the maintenance had accumulated for that period, it was estimated that upon completion of the Flagg Point bridges in 1972, the 1973 maintenance cost would be increased for that next year. However, the projected maintenance activities and their budgeted cost, when spread over a 9 year period, were still less than the normal maintenance costs per mile per year for a similar road.

- 38. When access was possible, in addition to studying the cost of maintenance, I also caused a survey to be conducted on the risk of loss, and the magnitude of the potential loss, of the road and bridges on the upper portion of the highway. Mr. William Gute and other employees visited the area and reported to me.
- 39. When access was apparent, I also considered further facts. First, due to the present financial plight of the State of Alaska, it is incumbent upon all state officers to be cognizant of obtaining revenues for the people of Alaska. The scrap iron market had been increasing very rapidly and the value of the state's scrap iron from the old railroad was and is increasing. It is prudent to sell the scrap iron piled along the Copper River Highway while the favorable market conditions persisted. The sale price would be enhanced if the Copper River Highway was in a repaired condition allowing efficient removal of the scrap iron. Second, the 1973 summer tourist season was about to begin and it could provide badly needed revenues to the people of Cordova if the area's tourist appeal could be heightened by road access to the available attractions. The area at Mile 49 provides such a scenic and recreational attraction due to the Million Dollar Bridge and the Miles and Childs Glaciers.
- 40. After reviewing all of these considerations in the spring of 1973 I decided that I should authorize maintenance on the Copper River Highway as soon as the weather and seasons permitted. Such maintenance has been initiated and the cost has been generally consistent with normal maintenance

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activity. The funds being expended are state road maintenance funds annually appropriated for that purpose. The tourists have been able to view the scenes at Mile 49 and large crowds have been using the area at Mile 49. In addition, the bridges have been shored up. Furthermore, I have advertised for bids on July 17, 1973, in order to sell 5,000 tons of scrap iron which can now be efficiently removed by any purchaser.

- 41. The exhibits referred to in this affidavit are attached and are true copies of the originals.
- 42. The photos, charts, maps, and descriptions comprising supplementary exhibits to this affidavit are true copies of the original, official photos, charts, maps and descriptions of the Alaska Department of Highways, collected in the course of highway business, which are on file in the Department's main offices at Douglas, Alaska

Bruce A. Campbell

SUBSCRIBED AND SWORN TO before me this // day of / /
July, 1973, at Juneau, Alaska.

Notary Public in and for Alaska

My Commission Expires:

My Commission Expires
Nevember 18, 1973