

# MEMORANDUM

# State of Alaska

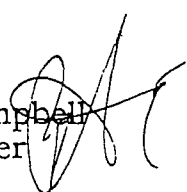
Department of Transportation & Public Facilities  
Office of the Commissioner

TO: Jack McGee  
Assistant Attorney General  
Department of Law

DATE: April 28, 1993

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FROM: Bruce A. Campbell  
Commissioner



SUBJECT: Tanana Chiefs v. SOA

**CONFIDENTIAL**  
**ATTORNEY/CLIENT COMMUNICATION**

I have reviewed your proposed appeal on the Dalton Highway injunction. Your statement of the facts on page 4 of your appeal is partially incorrect.

You state that the Right-of-Way (R/W) for the construction of the Dalton Highway was granted by the BLM on May 2, 1974. This is incorrect.

The R/W was acquired by virtue of RS 2477 [later codified 42 USC §932 (1970)]. That fact was confirmed by the U.S. Court of Appeals for the District of Columbia Circuit [72-1796, 72-1797 and 72-1798]; (Wilderness Society V. Morton, Secretary of the Interior) (Partial copy attached). Specifically, see footnote page 78 - "Since we hold the R/W valid under §932, even assuming this preference during pipeline construction, we need not reach the question of contract interpretations."

As Commissioner of Highways, I was intimately involved in the negotiations with Alyeska and I have personal knowledge of the facts.

I personally negotiated the Haul Road (later named the Dalton Highway) construction contract with Alyeska and required certain changes in the Alyeska proposed design so that the road would be safe for public travel (see page 77 of the attachment). I issued Alyeska notices to proceed on seven separate sections of the Haul Road and assigned State project engineers to each section to direct construction. ~~I did not apply for a R/W from BLM.~~

Andy Rollins, the BLM pipeline coordinator, was furious and threatened all sorts of sanctions. I informed him that the court had determined that a public R/W existed by virtue of RS 2477 (§932) and that an application was not needed. Rollins' ego was dented. A few days later a member of his staff called and asked if the BLM could issue a unilateral R/W permit, and I informed the caller that I had no control over what the BLM could or could not do.

Several days later the unilateral R/W grant dated May 2, 1974 arrived. It should be noted that this document makes no reference to any State request nor is it signed by any State official. It was authorized only by Rollins and is unilateral.

I believe I wrote a letter back to Rollins stating that the grant was unilateral and that the R/W had been previously obtained (and court confirmed) by virtue of §932. (I can confirm this by checking my old correspondence files which are in Anchorage).

In any event, the Notices to Proceed given to Alyeska were dated March 14, 1974 and actual construction was started on or before April 29, 1974, which date preceded the BLM May 2, 1993 unilateral grant.

The notices to proceed are attached.

The actions taken by the State and ARC in 1951, 1965 and 1966 were apparently considered by the court to be an assertion which validated the RS 2477 R/W. Otherwise, the statement in the footnote on page 79 to the effect that this court held that a valid §932 (2477) R/W existed would be logical only if the R/W existed prior to PLO 4582 dated January 17, 1969.

It is possible that the additional PLO's listed by the court actually revoked PLO 4582 in such a manner that the ground occupied by the R/W was at that time unreserved.

It should be noted that the appeals court also listed events which occurred which revoked PLO 4582 dated January 17, 1969.

In any event, construction was actually started prior to the BLM unilateral grant.

One further point, AS 19.40.100 states that "the Department shall maintain the highway and keep it open to industrial or commercial traffic throughout the year." If the Legislature wanted to have the road open only to industrial and commercial traffic, they could have inserted the word "only" prior to the word "industrial."

In addition, this part of the law refers to the entire year. There is apparently no prohibition to opening the highway for other uses during a part of the year, i.e., summer.

It would appear that a R/W granted to the public through federal lands via RS 2477 might not be voided by the State's action since the R/W would be vested in all people of the United States (just a thought).

Jack McGee

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The end result is that the notices to proceed were dated March 14, 1974. Work began on April 29, 1993 (or before) and the unilateral BLM R/W grant was issued May 2, 1974.

Since the BLM, and specifically Rollins, were not only aware the work was going on, but were on the ground inspecting it, they must have been satisfied that the §932 R/W existed. Otherwise, the Sierra Club and the BLM, etc. would have shut Alyeska and the Sate Department of Highways down in one second.

Attachments

cc: Bruce M. Betelho, Deputy Attorney General