

From: Bennett, John F (DOT)
To: [Baker, John T \(LAW\)](#)
Cc: [Sullivan, Kent \(LAW\)](#)
Subject: RE: Section Line Easements
Date: Wednesday, December 12, 2012 1:48:00 PM
Attachments: [image002.png](#)

Yes, I should have thought to pick on Kent first as we have had a couple of discussions regarding RS2477 trails over the last year but have yet to get into obscure section line easement scenarios with him. So maybe between the two of you, I will be set straight.

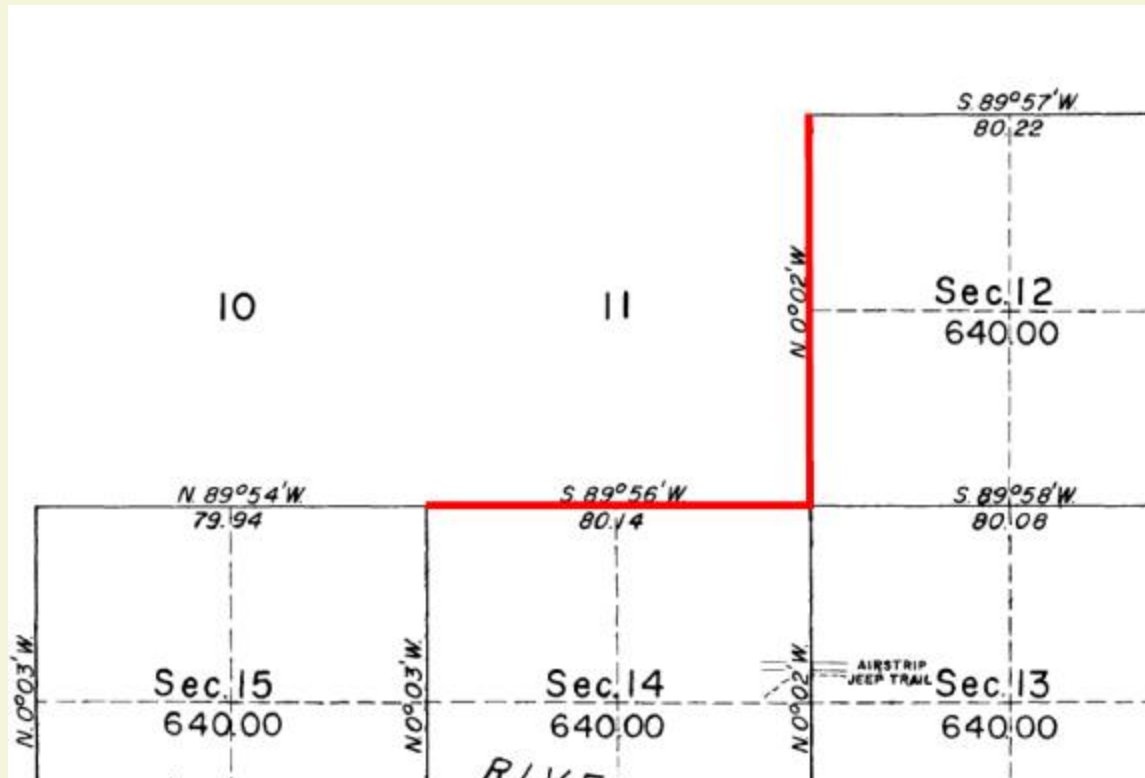
Scenario 1: The first one can be fairly common. You have a partially surveyed township in which not all of the section lines have been surveyed and monumented. In the graphic below, the east and south lines of section 11 have been surveyed and presented on an approved BLM township plat. The west and north lines have not been surveyed.

Assuming the RS2477 offer and unreserved status are in favor of an SLE, does an SLE attach when an individual section line is surveyed and the township plat for that survey is approved? Or will no SLE attach until the entire section is enclosed by lines monumented and approved by a township plat? To me, it seems reasonable that an SLE would attach to a surveyed, monumented and approved section line even if it formed the boundary of a section that was not fully enclosed. In the below graphic, the issue is whether there exists a 33' section line easement within Section 11 along its east and south boundaries. The DNR regulations (11 AAC 51.025 Editor's note) might be read to suggest that the critical element is the section of land rather than the section line. In Ch 19 SLA 1923, the Territorial Legislature accepted the RS 2477 grant saying "*A tract of 4 rods wide between each section of land in the Territory of Alaska is hereby dedicated for use as public highway, the section line being the center of said highway.....*" The DNR regulations state that "*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, and each section of surveyed, un-appropriated, unreserved federal land open to the grant of a right-of-way under R.S. 2477.*"

The 1969 Opinions of the Attorney General No. 7 which I believe is still the operable guidance regarding SLE's says in paragraph 7 that "*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.*"

My view is that the focus of section line easements is on the section line itself and not whether then entire section has been enclosed by a survey so I believe there exists a section line easement within section 11 along its south and east boundaries.

The surveyor who most recently told me about this situation said he had verbally consulted with more than one land surveyor and more than one attorney and other public officials and the opinions appear to be split right down the middle. So I'm interested whether this issue had ever come up and there is a DNR position or whether you have a feel for which side you would fall on.



Scenario 2: This uses the same graphic but might be of more interest to John as it does involve an allotment.

3.21.53: Territorial Legislature re-accepts the federal RS-2477 grant providing for 66' section line easements.

July 1955: Allottee claims occupancy started in SE ¼ of Section 11, T18N, R2W, S.M.

11.18.60: Partial township survey approved. The south and east section lines of section 11 are established by this plat, but not the north or west section lines.

4.9.63: Township extension survey defines South ½ of Section 11, T18N, R2W, S.M.

3.20.72: Allotment application filed.

5.30.74: Allotment Certificate issued.

When I was first presented with this I thought that if the SE ¼ had been claimed as a homestead rather than an allotment, it clearly would be subject to a 33' SLE assuming my conclusion above the graphic is correct. But as it had been claimed as a native allotment it really didn't matter whether the State thought an SLE existed on the allotment's south and east boundaries because the allotment is subject to federal law and the feds consider an SLE to be an unconstructed RS2477 and so not valid. Then I was told that the allotment had been recently relieved of its restricted status and so my understanding is that it is now just another property subject to state law. My initial thought was yes, because as the township survey that established these section lines had been approved during a period when Alaska had accepted the RS2477 grant, the SLE would attach upon approval of the survey, but it couldn't be used until the allotment had been released from federal oversight. And then the last piece of information came it which was that the allottee claimed occupancy in 1955 or more than 5 years before the approved survey. Under the relation back

doctrine, this got me back to no SLE in place as the land in the SE ¼ that eventually became the allotment constituted reserved public lands prior to the approved township plat.

The only thing that makes me wonder how the State of Alaska might view this is the work John Athens did in arguing that the date of application should hold over the date of occupancy. John, you are likely more familiar with that work than Kent. John Athens was appealing cases where BLM had issued null and void decisions regarding BLM ROW grants for highways once they determined that an allottee's occupancy preceded our ROW grant. A conclusion was never reached as the feds refused to waive sovereignty and allow the argument to be heard in federal court. My understanding is that for our purposes that was almost as good as a win because the feds can't eject us without taking us to court and getting into the application vs. occupancy argument that they apparently don't want heard.

So the question is: from the State's perspective, would we give weight to the allottee's occupancy date in asserting or not asserting the SLE within section 11? If we did, no SLE exists. If we go with the application date, an SLE does exist.

I now realize this has been a far longer presentation than I let on, but if you have some thoughts I would appreciate hearing them. And if your suggestion is to just avoid such situations, I'm good with that also. Thanks, in advance. JohnB

From: Baker, John T (LAW)
Sent: Wednesday, December 12, 2012 9:56 AM
To: Bennett, John F (DOT)
Cc: Sullivan, Kent (LAW)
Subject: RE: Section Line Easements

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John,

Go ahead and send them along. I don't claim to be an expert on section line easements, but questions do arise periodically and I have been exposed to a lot of Native Allotment issues over the years. I will probably share whatever you send with Kent Sullivan also and see what he thinks.

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From: Bennett, John F (DOT)
Sent: Wednesday, December 12, 2012 9:52 AM
To: Baker, John T (LAW)
Subject: Section Line Easements

John, would I be correct in assuming that you regularly field SLE questions from the DNR PAAD unit or DNR Surveys? I have a hypothetical SLE situation. Actually I have heard of these situations from a

couple of private surveyors but we haven't run across them at DOT yet. I thought I might run them by you as we don't currently have any AAGs in Transportation who have spent much time considering these. As we don't have a project relating to these I wouldn't want you to spend more than a couple minutes thinking about them but I thought you might have run up against them. The situations relate to a partial township survey and a native allotment that has now become unrestricted. If you wouldn't mind me emailing you the chronology of events, please let me know and I will send them along.
Thanks, JohnB

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