

From: John Bennett
To: [Chad Weiler](#)
Subject: Newtok SLE Determination
Date: Tuesday, February 05, 2019 9:31:00 AM

Chad, I have managed to avoid dealing with federal SLEs along protracted section lines for most of my career. Even with the assertion in the 1969 Opinions of the Attorney General that they can exist on protracted section lines it always seemed a bit sketchy to assert something that has not been tested in the courts. I've placed a folder named "JFB – Protracted SLE" in the Newtok/Survey/Research project. Back in December of 2017 I did a report for a company seeking to purchase "carbon credits" over certain ANCSA lands. The amount of the purchase was contingent upon the acreage that would be protected. But this had to be reduced by the amount of land subject to SLEs as those could not be protected from development. Most of the SLEs, if they existed, would be based on protracted section lines. I outlined the DNR argument that they existed and counter arguments suggesting that if this was ever challenged in court, it might not go DNR's way. I still believe that if someone challenges the protracted section line assertion, it is not guaranteed that DNR would win. I have placed a highlighted copy of the report in the folder. Three other documents were added that support DNR's assertion that protracted section lines may be subject to a federal SLE. First is a 2010 letter from the AGO to the BLM Solicitor that asserts the validity of a protracted SLE. Next is the preliminary decision for EV 3-280. This was a request to vacate a section line easement that would only exist if the DNR assertion of federal SLEs over protracted section lines were valid. This is just evidence that DNR cadastral is operating as if this is not a question to be resolved, but that once they believe they exist, they constitute an encumbrance that can only be removed by vacation. Third is a draft policy statement dated January 4, 2018 that focuses on whether Mental Health Trust lands are subject either federal or state SLEs. In this document they basically outline the research and documentation process that would lead to a conclusion that a protracted federal section line easement is valid. More support that DNR is solid in asserting the state's rights to protracted federal SLEs.

The one piece of the puzzle for Newtok that I didn't have and couldn't get easily online was a copy of the official protraction diagram and the "notice of filing" as published in the federal register. Larry King is the DNR surveyor in Fairbanks and he has access to the DNR server that has copies of the protraction diagrams. I have asked him to send me the diagram for T8N, R87W SM. Once I have that I can easily find the Federal Register publication. With these I can see whether in DNR's opinion, the Newtok protracted Section Lines would be subject to federal SLEs (33' each side). Back when the Division of Aviation handled airport design and surveys, if they determined that a valid SLE existed across an airport property, they would go through the process to have them vacated. I think they were concerned that someone would assert a right of access across an airport. That process was abandoned when someone realized that management authority in AS 02 allows the airport operator (mostly DOT&PF) to secure the airport boundary and control access and traffic as needed. Essentially, that authority would trump a right of access authority for joe public to drive across the runway.

While an SLE is essentially an easement for highway purposes, DNR is now the lead agency for asserting and defending their validity. So even if showing SLE's on the acquisition plat might complicate the land acquisition process (I'm betting the ANCSA corporation will object...) DNR will

not likely allow the plat to go through their approval process without showing them. Once I get the protraction diagram from Larry, if our conclusion is that the SLE exists and so should be shown on the plat, you might want to run it one time past Louise and whoever might be reviewing the acquisition plat at DNR to see if we have correctly predicted their positions. JohnB

John F. Bennett, PLS, SR/WA *Senior Land Surveyor – Right of Way Services*

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From: Chad Weiler
Sent: Monday, February 04, 2019 4:14 PM
To: John Bennett
Subject: SLE Determination

Hey John-

Attached is an abstract file for the Mertarvik area, my preliminary RWAP and the Patent. Assuming you have time, I would like to get your opinion on whether or not section line easements exists in the area. I've got my opinion however I want to make sure I'm looking at it correctly. Thanks John.

The project number is 2652.01, Tsk 05 ROW Acquisition Plat.

Chad Weiler, PLS *Senior Land Surveyor*

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