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UNITED STATES DISTRICT COURT

JAN - 5 1987

DISTRICT OF ALASKA

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DISTRICT OF ALASKA

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By OR Deputy

UNITED STATES OF AMERICA,)	Case No. A84-289 Civil
)	
Plaintiff,)	Anchorage, Alaska
)	December 2, 1986
vs.)	2:05 P.M.
)	
JOSEPH VOGLER,)	Partial Transcript:
)	
Defendant.)	Memorandum and Order

BEFORE THE HONORABLE JAMES M. FITZGERALD
UNITED STATES DISTRICT COURT JUDGE

- ① Ruling in 2477 - See P. 40 "ANILCA § 1110(b) - does not limit Vogler's access - existing access"
- ② "New Rights given 1110(b)" - See P 22
- ③ Pt. of way providing access to Vogler claims predated enactment of ANILCA - See P 42
- ④ "what are established roads?" See P 19

Court Recorder: Cheryl Slade

Transcription Service: V/ARS, Inc.
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Sacramento, CA 95814
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P 47. Ct. Peties in legislative history of 1108

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

P 45 - Criminal Penalties 36 CFR - 18-14-13, 15. (

P 41 § 3 - art. IV cited as authority.

P 43 § 1902 - 16 USC + 1605C § 1-3

JOE VOGLER COLLECTION 06/19/84

1 promulgated.

2 The District Court in Wilkenson also distinguished
3 Colorado v. Toll, 268 U.S. 228, Supreme Court (1929) presently
4 relied upon by Vogler. In this connection the District Court
5 in Wilkenson observed: "Mesa County cites Colorado v. Toll,
6 268 U.S. 228, 45 Supreme Court 505, 69 L.Ed. 927 (1925),
7 for the proposition that the federal government has power to
8 regulate under the Property Clause only over property
9 belonging to the United States, and that this includes only
10 property ceded to the government by the state or private
11 landowner. But this was addressed by the Supreme Court in
12 Kleppe, supra, when it stated that 'while Congress can acquire
13 exclusive or partial jurisdiction over lands within a State
14 by the State's consent or cession, the presence or absence
15 of such jurisdiction has nothing to do with Congress' powers
16 under the Property Clause.'" Citing 426 U.S. at 542-43, 96
17 Supreme Court at 2293.

18 In short, I also conclude that Vogler's reliance
19 upon Colorado v. Toll is misplaced.

20 Finally, I find in the numerous affidavits that were
21 submitted sufficient evidence to believe that the right of
22 way providing access to Vogler's claims predated the enact-
23 ment of the National Interest Conservation Lands Act. But
24 even assuming that the right of way exists, I conclude that
25 the regulations are a valid exercise of the broad discretion

1 provided the Secretary under the provisions of 16 U.S. Code
2 section 1-3. (Pause.)

3 For the reasons which I have stated, I reject all
4 of Vogler's affirmative defenses and conclude that summary
5 judgment should -- or conclude that his affirmative defenses
6 are without any merit whatsoever.

7 I now turn to the government's claims. I concluded
8 at the preliminary -- at the hearing on the preliminary
9 injunction that Vogler was damaging National Park property
10 by operating heavy equipment within the preserve and that
11 unless enjoined, he would proceed to mine his claims without
12 obtaining approval of a mining plan of operations as required
13 by the Mining and the Parks Act, 16 U.S. Code section 1902,
14 et seq. Since I have rejected all Vogler's defenses, I now
15 concluded that a permanent injunction should be entered
16 against Vogler in favor of the government, enjoining Vogler
17 from operating his off-road equipment along the Bielenberg
18 Trail without obtaining a permit and from mining his claims
19 on Woodchopper Creek and Mineral Creek and I conclude on
20 the basis of the findings which were made after the hearing
21 on the preliminary injunction that unless restrained,
22 Vogler will -- would continue to operate the D-8 Caterpillar
23 within the boundaries of the preserve and that he would
24 undertake mining on his claims at Woodchopper and Mineral
25 Creek without obtaining -- without submitting and obtaining

1 approval of a mining plan of operation -- a plan of
2 operations.

3 I shall direct the federal government now to order
4 out a copy of this transcription, which should be filed --
5 of my decision, which shall be filed in this case and to
6 submit an appropriate restrain -- injunction, permanent
7 injunction restraining Vogler from operating this equipment
8 without obtaining the required permits.

9 Finally, I shall make a finding that there is no
10 just -- there is no reason for the -- finally, I shall make
11 a finding that the final judgment enjoining Vogler shall be
12 entered in this case and find no reason to delay the entry
13 of the final judgment.

14 The matter of the government's claim relating to
15 monetary damages will be scheduled for trial at a later
16 date. Okay.

17 (Whereupon the hearing was adjourned at 3:45 p.m.)

18 ---oOo---

19 CERTIFICATE

20 I certify that the foregoing is a correct transcript
21 from the electronic sound recording of the proceedings in
22 the above-entitled matter.

23 
24 Nancy Farley, Transcriber

January 2, 1987

25

5134 S.W. 311th Place
Federal Way, Wash. 98023
June 14, 1985

Dear Mr. Vogler:

In reply to your inquiry concerning taking a Cat from Circle Hot Springs to Coal Creek, I was last at Coal Creek-Woodchopper in 1946. The only time I recall equipment taking that route was about 1940, when a dredge upper tumbler was brought from Circle Hot Springs to Woodchopper in the winter.

We had Cats all over the landscape in the open season, and I know of no damage to the "ecology". The so-called Environmentalists are throughing monkey wrenches into the machinery wherever and whenever they can.

Sorry I could not be of more help to you.

Sincerely,

Robert Bauman

06/19/89
JOE VOGELER COLLECTION

Dec 15, 1984

My name is Oscar Buehler. I am 73 years old and was born at home here in Fairbanks in 1911. I grew up here - and my father after mining in Dawson, came here and he and his brother operated a shoe repair shop & shoe store. He grubstaked a number of miners in the Fairbanks area. This was quite the thing here, all the men I needed was a couple hundred dollars & they could go out all winter & prospect.

I went to work for the Alaska Road Commission in 1932-3 doing anything that was necessary, driving with them! One year, we used horses & slips. Later when cars came in, I drove them.

Frank Nash was an engineer with the road commission - you would call him a scout, and he & Donald MacDonald II, also a scout and - they used to scout the country to see if a road was feasible. Another man who worked as a scout was Capt. Jim Quimbo. I worked with him more than with Frank Nash.

About 1931 or 1932, MacDonald would to scout out the Yukon valley for the international highway and as Frank Nash wanted to see this, they made up a party with Dr. Pally who was looking for a road to Coal and Wood-Chopped Cuts where he was buying

mining claims for his mining venture.

The road Commissioner had her a hundred sled dogs and had access to all the old military equipment - sleds, snowshoes, visgans from the signal Corps. Dr Patty had his own team and a man. There was another man with us, Ther was Dr Patty, her man, Frank Herb, Donald Macdonald and another man and myself.

We left Circle Hot Springs - probably in March or April. There was a good trail, broken by use that winter. Jerry Rivard was trapping up there at the time. It was a good trail, probably five or six feet wide. as you went along, with a heavy load, you sometimes had to cut an overhanging tree. The dogs would clip right along, on a twelve miles per hour. I don't remember whether we snowshoed out or not. The trail was well used and it looked like it was well established by use at that time.

It was agreed by all that this would make a good road & where it should be put.

I made another trip with Macdonald in the Yukon country looking for the international highway, we used horses and it was summer time & the mosquitoes

(3)

were terrible but it didn't work out. I am sure that this was a well established trail there that had probably been used by the Indians, the miners and the trappers for a long time. It was pretty much on the hillside as I remember it.

That was the only time that I went across - but I would say that it was a well used trail at that time —

Oscar S. Bellis

Central, Alaska

Jan. 29, 1985

I am a resident of Central
and have been since 1932
I have been on the Bielenburg
Trail as early as 1934. I
It was at that time a
foot trail or sled trail
I remember being on a hunting
trip with Fred Wiley in the
fall of 1934. We met
Phil Berail coming from
Woodchopper and heading
for Cliche Hot Springs.

Anders H. Bergson

Patricia Oaker
Notary Public in & for Alaska
Comm. expires 8/19/88

May 16 - 1985

My name is Jerry Rival. I have lived in Alaska - to name in 1934. I was at Cule Hot Springs in the thirties - when Phil Brail came in from Woodlapper with a cat. to get some parts for Dr. Petty, Old Bob Casey & Frank Leach were running the springs - a lot of miners lived there in the summer - a good one & had with a bar near for \$1.50⁰⁰ per month - I trapped in the winter & worked for the miner - ~~Yutajon~~ on Deodwood Creek - during the summer.

It was a lot better than $\frac{\$1.50}{\text{day}}$ per day working in the woods in various creek banks of hay - & horses. This is why I came to Alaska - they called it twitching, dropping the log.

I was in Cule Hot Springs when Eddie O'Leary brought in a brand new T.D. 24 - in July or August of ____ . Walter Roman & I had used the Beelenberg trail to go to ^{from} Sam Creek a couple of years before.

Ted Matthews had ordered the cat, I believe. I can't think of the young man's ^{name}. He had a crippled arm - I told them about the trail - It could have been 1948 - I'm not sure.

He used the trail, and made it in 14 hours - I understand. He had a new cat & probably put it in high gear and went.

I remember Dr. Patterson coming in
to Fairbanks - to promote a road
to Eagle from Circle Hot Springs
I can't remember what year this
was. This was the man that was
killed in his widgeon - a good
friend of mine was killed in the
same wreck. We were going to
go trapping that winter.

I know that this cat was taken
over in July or August because the
snow was all gone in the hills.

Jerry Richard

TOPOGRAPHY AND VERTICAL ALIGNMENT

The basic topographic information for this area was derived from contour editions of the USGS 1:250,000 sheets identified as Eagle, Charley River and Circle, Alaska. The contour interval in surveyed areas is 200 feet and some inferred contours are shown in the so-called unsurveyed areas.

Between Circle Hot Springs and the Charley River the proposed road passes through "unsurveyed" ground in which only a few dashed contours are indicated. Recorded elevations at the Circle Hot Springs landing area and at Woodchopper landing area are the only two known points recorded. From Circle Hot Springs to Thanksgiving Creek the road passes through subdued terrain in which low gradients prevail. Between Thanksgiving, Webber, Woodchopper, Coal and Sam Creeks the country mounts to altitudes approaching 2000 feet above sea level at each watershed divide. In these areas some difficulty was encountered in maintaining permissible grades and curvature but a conservative approach was used leaving ample leeway for establishing increased grades and a shortened line. Under these circumstances the general location is feasible and grades less than those shown may be available.

In several areas the topography and drainage shown on the

USGS sheet bears no relationship to the actual terrain. This is especially true between Coal Creek and Sam Creek where the road follows a very favorable ridge location at a reasonably constant elevation for some distance. The USGS sheet "Charley River" shows nonexistent north flowing drainage and deep dissection across the line. Consequently, assumed elevations may be somewhat in error. In these areas basic gradients were established by the gradients of accumulation ditches serving present and abandoned mines. The average fall of streams and other devices were used to establish rough control while photogrammetric instruments provided intermediate elevations at breaks in grade. As noted elsewhere, lack of overlap caused some difficulty on upper Bonanza Creek. Two separate orders of photography have failed to give good coverage of this one mile area. A third order has been placed for old trimetragon coverage that may provide improved detail when it has been copied and carefully enlarged. If this proves feasible a new mosaic will be furnished. We believe this to be relatively unimportant since the distorted area is a smooth hillside in uniform terrain.

From the junction of Dome Creek and Washington Creek to the point where the road crosses Seventymile River the USGS topo sheets are inaccurate in their representation of the terrain

and drainage and perhaps elevations. This caused considerable difficulty in preparing a suitable approach to the crossing. In general it indicates that route selection cannot be approximated from these maps of interior terrain.

On the profiles grades have been shown in some detail. Long, low grades are difficult to estimate and since they are well within the standards required, they have not been specifically identified as to percentage of grade in most instances. More critical grades have been determined as accurately as is possible without ground control. These are constantly subject to error but we believe in minor degree only. In some instances average grades have been shown rather than to indicate each minor change in gradient along a line that is subject to change in the field.

MOSAIC NO. 1

Sheet No. 1 shows the initial point of the project as starting at the terminus of the Steese Highway at the Circle Hot Springs airport area. The principal landing area and the secondary strip can be seen and identified on the left of the sheet with the community of Circle Hot Springs appearing in the lower left hand corner. Hot Springs Creek flows to the left of the end of the runway and the road to the Portage Creek mining camp extends to the middle of the sheet. The workings and tailings of the operation at Portage Creek along with the service road can be readily identified. In general, all of these camps are located near the break in terrain where the creeks issue from higher ground and enter a lower area on their approach to the Yukon River. In this area the road location roughly parallels the boundary of the highland to the south. This type of location continues for several miles to the east taking advantage of the easy grades that are typical of this type of terrain and of adequate sources of borrow material in the form of gravels that are available at the mouth of each of these creeks. In selecting a location in an area such as this there is always the problem of a compromise between the high line location and more level ground that universally lies at a lower elevation and at a greater distance from the base of the hills. This problem is primarily concerned.

with drainage and drainage structures. At the mouth of each of these creeks there is the basic land form of an alluvial fan that has been built up over long periods of geologic time and the characteristic features of these fans are found at the mouth of each of these creeks that the proposed road traverses. The problem revolves around the fact that the channels in the alluvial fan are generally not stable and therefore a road location must be chosen to utilize the best circumstances. At the neck of the fan, where it issues from the hills, the channel is most stable since it is directed usually by bedrock control of the channel within the hills. Consequently, while the channel is stable it is usually at its widest and deepest at this point. As the stream proceeds outward toward the extent of the fan it loses velocity and deposits gravel within the channel thus causing a change of the channel as it chokes itself at one point. The result of this action is a complex of channels that are periodically utilized and then abandoned as the fan is raised in elevation and extended by the continuing deposition of the gravels carried by the stream; therefore, while the channels are shallow and narrow at a greater distance from the hills there are also more of them and they are less stable. Consequently, a road constructed across the outer skirts of the fan will almost invariably suffer from washouts because of the abandonment of established