

The Surveyor's Role in RS 2477 and Section Line Easement Issues

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(The following are brief summaries of some of the RS 2477 and Section Line Easement issues in which Kalen and Associates has been involved.)

- Shultz vs. United States, Dept. of the Army: Lazelle Road RS-2477 Dispute, 1990-91. Private individual is claiming right to cross government property to access land he is developing. Forensic services involve extensive research into and interpretation of BLM records, original field notes, maps, and aerial photographs of the area; Surveyor's Report with the history of the dispute analyzed, location and usage of historical and current roads and trails interpreted, and professional opinions offered. Maps with multiple overlays produced in-house with AutoCAD methods. Expert testimony provided for deposition in Jan., 1991 and at trial in April, 1991 in Federal Court.

- Robertson and Ziegler vs. Cacy / Portage Creek Mining Claims Dispute, 1987-89: Kalen was Surveyor for Eddra Robertson in staking and filing of 10 placer claims in the Central Mining District. Claim locations and boundaries were disputed by neighboring miner, who over-staked on same ground. Forensic services involved extensive research of BLM records, maps, aerial photographs, Location Notices and Affidavits of Labor for federal and state claims in the area, field verification of the 10 claims, and deposition and expert testimony at legal hearings. Julian Rice and Ken Ringstad were attorneys for Robertson.

- Walt's Place Subdivision, 1988: Settled dispute over location and definition of a portion of the old Fairbanks-Valdez Trail near Salcha and BLM meander accretions. Both sides retained attorneys. The case was resolved by acceptance by both sides of Kalen's opinion on survey boundaries. An RS-2477 right-of-way for the Fairbanks-Valdez Road was removed by a vacation of the old trail within the subdivision. Vacation plat accepted by the Fairbanks North Star Borough; litigation was avoided.

- Tribulation Trail Right-of-Way: New vs. Demoski, 1985-88: Forensic services involved research for attorney and as-built survey of the road, which discovered trespass modification of the road. Preliminary plat, plan & profiles, and a Surveyor's Report were prepared by Kalen, who also provided expert witness testimony in Superior Court as to road location. Lower Court and opposing parties agreed on Kalen's survey as the basis for settlement. In an odd twist, the AK. Supreme Ct. ruled that the road does not qualify to be a public road under either RS-2477 or adverse possession after the parties agreed that it is a public road.

- Bunnell Park Subdivision Drainage Dispute, 1987: Forensic Services included topographic survey of a portion of subdivision and road right-of-way with culverts, in a case involving flooding of a residence. Also: the preparation of a map, a Surveyor's Report on the cause of the drainage problem and recommendations; and expert testimony in deposition for Attorney Ken Ringstad on the liability for flooding.

- William Lentsch & O'Connor Creek Development Corporation vs. State of Alaska, et. al., 1985-88: RS-2477 dispute over right of public (i.e., individual dog mushers) access across a private airport. Kalen was the Surveyor for Lentsch's proposed Meadows Airpark Development which stalled over the question of location and use of the O'Connor Creek Trail right-of-way, and expert witness for Lentsch (Attorney was Joseph Sheehan). Forensic services involved research and expert testimony in Superior Court as to the question of the location and history of O'Connor Creek Trail, based on BLM records, deeds, Field Notes and Plats, GLO records, Alaska Road Commission records, and USGS maps, as well as 1949 aerial photograph interpretation. The Superior Court ruled that an RS 2477 right-of-way existed in an abandoned location as determined by Kalen, not on the airport. Lentsch did not have funds to carry appeal through Supreme Court.

- Ester Loop RS-2477 Dispute, 1983-1989: Kalen was under contract to the Fairbanks North Star Borough at three stages in this dispute with various residents of the town of Ester. In 1983: Provided research and field investigation to establish location and definition of Ester Loop. In 1985: Extensive plat, deed, and chain of title research; aerial photography; ground survey; Surveyor's Report on history of Loop with alternatives and recommendation; base map and as-builts of roads & structures of Ester Loop based on 1950's drawing from U.S. Smelting, Refining, & Mining Co. In 1988-89: Preparation for Litigation based on earlier work and further study of certificates, plats & deeds of early mining claims and BLM surveys in the area; aerial photo interpretation. The Borough argued that an RS-2477 right-of-way does exist for the Ester Loop road, currently obstructed by Coughlin and others. Case was resolved out-of-court.

- Brice vs. State of Alaska, et. al., 1983: Expert Witness for State of Alaska in a case in which the Alaska Supreme Court ruled that section line easements created by a 1923 statute were not vacated when the statute was repealed in 1949. Brices challenged the right of residents of State-owned Tungsten Subdivision to plan an access road using the section line easement common to the subdivision and Brice's property. Kalen had been the Surveyor in charge of Tungsten Subdivision seeking the right-of-way and the State's expert witness. The Superior Court opinion that the repeal of the 1923 statute suspended the creation of section line easements, but did not vacate easements previously created was upheld by the Supreme Court. A landmark decision for RS-2477 cases in the State of Alaska.