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POSITION PAPER
PUBLIC ROADS AND TRAILS

A matter of concern for nearly every citizen of Alaska is the issue of existing roads and trails. Since settlement started in Alaska after purchase in 1867, the majority of the roads and trails were constructed out of necessity by the users of the public land. The construction was carried out under a number of statutes including in part the 1866 mining law which gave us RS2477 and sectionline easements. The 1872 mining law, the homestead act and other settlement laws granted the right to construct access to claim areas across public lands. The rights granted, in all cases, were non-exclusive with public roads and trails resulting.

The roads and trails for the most part have never been platted or noted to the public records. As a result, the grants have never been included as patent reservation but rather the patents are issued subject to valid existing rights which include the right of public access over roads and trails such as we are discussing here. As settlement expands and lands pass into private ownership or single use management areas, the issue of public use on existing roads and trails intensifies into conflicts. At present conflicts can only be resolved in court and the decision usually is based on less than a full understanding of the rights granted under Federal law and less than a complete record of the construction, use and land ownership at the time public use was initiated.

Various State agencies have different interpretations of the public rights granted under Federal law and often have different interpretations within the same agency depending upon the management scheme of the day for a specific area. In short there is no consistant policy on the public's right of access granted under Federal law even though these rights cannot be legally abrogated by unilateral individual or agency action.

Unfortunately the public rights under these rights-of-way are only enforceable by an individual in court. Between individuals, court action is possible but should not be necessary if the state exercises proper authority over the Federal grants. There is virtually no chance for an individual to litigate an access issue if a State agency opposes use of a road and trail since most individuals cannot afford to fight once the full resources of the State are brought to bear against an individual. If justice is to be served and the public rights protected, the State must be forced to gather and present the facts of a case and protect the public interest rather than litigate on the basis of an agency position as is now the case.

Recent cases of note on the issue of Federal right-of-way grants are:

1. The Stampede Trail controversy between DOT-PF and ADL. The trail was constructed under the auspices of the State under the "pioneer access program" under RS2477. Because of National Park Service interest in the area, ADL took the position that the Stampede Trail was not a public road. Fortunately DOT-PF prevailed. Otherwise the miners of the area would have lost their only overland access.

2. The Salcha Trail built under RS2477 and the 1872 mining law was used by a GVEA contractor to remove right-of-way timber in advance of powerline construction. The contractor was served with notice of trespass and finally was forced to get a permit for use of this public road. Alyeska was denied use of this public road and was forced to construct and use alternate access at great expense.

3. Only recently, Alaska Division of Parks has started issuing "tickets" to residents using the Colorado Creek Road within the Chena Recreation Area. This road not only predated the creation of the Chena Recreation Area but also predated Alaska Statehood. This case is another example of citizens trying to fight a State agency which has unlimited State resources to bring to bear. It is interesting and germaine to note that Dave Snarski, the local director of the Division of Parks, stated at the Tanana Trail Council meeting held on January 9, 1980, that the Division of Parks had no obligation to recognize prior existing rights in park and recreation areas.

Much more is at issue than conflicts between citizens or citizens and the State. The Federal D-2 issue must come to grips with valid existing right-of-way grants which are unrecorded. Similarly the issue must be resolved on Alaska Native Claims Settlement lands. At stake is millions of dollars of private interest which have been lawfully acquired and maintained. These rights will be lost if access is closed or curtailed. It is time that the State of Alaska accepted its role as protector of the public rights. It is time that the State accepted its role as manager of Federal access grants rather than leaving that responsibility to the citizens to defend.

To eliminate agency disputes, citizen-State conflicts, and to prevent the loss of legal existing access, legislation is needed which establishes a clear specific State policy on access grants received from the Federal government and is binding on all State agencies. Also needed is a specific procedure for determining the existence of a Federal access grant. This phase of the legislation must be based on Federal law rather than past State policy which has been inconsistent.

To avoid costly litigation which the average citizen cannot afford, a Board of Arbitration should be established to determine the existance of a Federal access grant. At a minimum, this board should consist of the Commissioners of DOT-PF, DNR and C & RA, a representative of local government, and a member of the American Right-of-Way Association. Upon a determination of the Board that a Federal grant does exist, the State must then be bound to manage and defend the public's right to utilize the grant.

Other items needed in this legislation are:

Clear assignment of management responsibilities preferably to a single State agency such as DOT-PF.

2 Require a clear and accessible public record of all such grants. At present permission must be obtained from the State before a sectionline easement may be utilized but the State refuses to acknowledge existence of the easement even when furnished adequate information.

3. Vacation procedures are needed in a clearly defined manner to eliminate Federally granted access rights which are no longer needed.

4. Amendments to all legislation which established Parks and Recreation Areas to reflect the intent to honour or eliminate Federal access grants.

5. A stand in opposition to the recently proposed Federal Right-of-Way regulations, 43CFR2800, which require identification and survey of Federal Right-of-Way grants within three years or lose them.

The concerns set out in this paper will not go away and will certainly intensify. The State, its citizens, and local governments will be subjected to loss of rights, continuing litigation at great public and private expense, and acquisition of alternate access at great public expense. It is in the public interest to address this issue now.

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