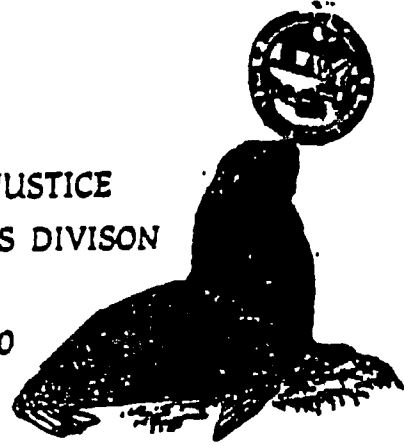


UNITED STATES DEPARTMENT OF JUSTICE  
ENVIRONMENT & NATURAL RESOURCES DIVISION  
APPELLATE SECTION  
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Resubmitted September 12, 1996  
Opinion Withdrawn September 20, 1996

Filed September 20, 1996

Before: Mary M. Schroeder, Betty B. Fletcher and  
Arthur L. Alarcon, Circuit Judges.

Per Curiam Opinion;  
Dissent by Judge Alarcon

12517

## SUMMARY

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### Real Estate/Covenants and Easements

The court of appeals, in a per curiam opinion substituting for an earlier opinion ordered withdrawn, affirmed a district court judgment. The court held that a landowner asserting an easement over government property in Alaska must establish a continuous route or right of way.

Appellant Paul Shultz claimed that he had a right-of-way across Fort Wainwright to get back and forth between Fairbanks and his property. Shultz brought a quiet title action against the United States. The district court found in favor of the government and Shultz appealed.

[1] Shultz has not sustained his burden to factually establish a continuous route or a right-of-way under Alaska common law. Therefore, the district court judgment is affirmed. Shultz's argument that the district court erred by holding that his action was time-barred is not reached.

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## COUNSEL

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for Amicus, State of Alaska.

Steven F. Alder, Assistant Attorney General, Salt Lake City,  
Utah, for Amicus, The State of Utah and the Utah Association  
of Counties.

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ORDER

The opinion dated November 30, 1993 is withdrawn.

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OPINION

PER CURIAM:

The government's petition for rehearing is granted, the opinion of November 30, 1993 at 10 F.3d 649 is withdrawn, and the following opinion is substituted in its place.

[1] Paul G. Shultz appeals the district court's judgment in favor of the government in his quiet title action under 28 U.S.C. § 2409a. Shultz argued that he has a right-of-way across Fort Wainwright to get back and forth between Fairbanks and his property under either R.S. 2477, 43 U.S.C. § 932, or Alaska common law, or both. Because we ultimately agree with the district court that Shultz has not sustained his burden to factually establish a continuous R.S. 2477 route or a right-of-way under Alaska common law, we affirm the district court. We do not reach Shultz's argument that the district court erred by holding that his action was time-barred by 28 U.S.C. § 2409a(g).

AFFIRMED.

ALARCON, Circuit Judge, dissenting:

I respectfully dissent.

I would deny the petition for a rehearing and reverse the district court's judgment for the reasons set forth in Judge Fletcher's scholarly opinion in *Shultz v. Department of the Army*, 10 F.3d 649 (9th Cir. 1993).

12520