

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities

#45

TO: John Athens
Assistant Attorney General
Attorney General's Office

DATE: November 25, 1986

FILE NO: 24.13 D/10

TELEPHONE NO: 451-5150

SUBJECT Section Line Easements

FROM: *John D. Martin*
John D. Martin, P.E.
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Northern Region

friend of the court

The Federal government has filed an amicus curiae brief (copy attached) in an Anchorage civil case challenging the existence and proposed development of a section line easement. The plaintiff in that case argues that the section line easement doesn't exist, but even if it does, construction of a drainage ditch which isn't needed for a road is not an allowable use of the easement. The amicus curiae brief expands the issue to the point of challenging the existence of any section line easement on Federal land where no road construction was undertaken. The Federal argument is that since section line easements are based on RS2477 and, since RS2477 requires construction, no automatic section line easements exist where construction was not undertaken.

Since the land law community, including the Federal government, has long recognized and relied on section line easements, and since it is common for property owners to rely on section line easements for physical and/or legal access, a determination that they do not, and never did, exist on Federal land would cause a severe hardship to many property owners and to the State. It is important that the State develop and present a case protecting them and that we not miss any court deadlines for filing a responsive amicus curiae brief. Given the historic ability of states to define the details of RS2477 and given the 60 plus year history of recognition of section line easements in Alaska, we believe the State can successfully defend them. Please review the attached Federal brief and get back to us on this as soon as possible.

Work on this issue should be charged to our Northern Region ROW Acquisition project, number 24200495-57801-30184181.

Pam - where does this come from? Owen

NP/bt

Attachment

cc: Mark Hickey, Special Assistant for External Affairs, Juneau

haron