

Mining/Road Conflicts

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Often we find federal mining claims in conflict with the road ROW in which the location date of the claim is prior to the effective date of the ROW.

There have been situations specifically on the Tofty road and Taylor highway at Jack Wade creek where M&O has required a miner who desires to mine through the road to construct a detour and then replace the road to our standards when complete. I'm not sure exactly what the facts were in those situations but it is possible that they were essentially negotiated agreements due to the fact that both DOT and the miner were unsure of their respective rights.

In May of 1999 we were notified by BLM that a miner intended to mine through the Steese Highway at MP 101. The mining claim had been located on July 8, 1969. A federal Title 23 ROW grant was issued to DOT for a realignment of the Steese across this claim on June 11, 1971. There did not appear to be an issue of invalidation due to lack of discovery or filings of proof of labor.

Had the ROW grant preceded the mining claim: "Portions of mining claims located on land subject to a pre-existing highway right of way granted to a state pursuant to the Federal Aid Highway Act, 23 U.S.C. 317, are null and void to the extent they include those lands within the highway right of way" (Jesse R. Collins et al, 127 IBLA 122 (1993). I suspect the same could be found for PLO rights of way that preceded the mining location.

In the Steese case we based our case upon a claim of prescription against the possessory interests of the mining claimant. Citations:

Weidner v. Dept. of Transportation & Pub. Fac., 860 P.2d 1205 (Alaska 1993) - This case allowed a prescriptive easement in favor of the public for a road crossing private property that met the tests of adverse possession.

Fairbanks N. Star Borough v Lakeview Enter., 897 P.2d 47 (Alaska 1995) Inverse condemnation claims are barred after 10 year statute of limitations.

Duguid v. Best, 291 F.2d 235 (9th cir. 1961) Resolution of conflicting possessory interest claims an issue for state court.

We also noted that the mining would be a violation of AS 19.25.200 (Encroachments), AS 28.35.140 (unlawful obstruction or blocking of traffic), and AS 11.46.482 (criminal mischief in the second degree)

We should be able to show in most federal mining claim/ROW conflicts that the 10 year statute of limitations has run, giving us the superior interest. We would still entertain a request by the miner to mine through the road, however, it would be subject to our terms and conditions, specifically that an acceptable detour be provided and that the road be reconstructed to our standards upon completion of the mining operation.