

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

June 7, 1999

Steven Olson
P.O. Box 10655
Fairbanks, AK 99710

Re: Steese Highway /Mining claim F63476 conflict

Dear Mr. Olson:

We understand from the plan of operations you recently submitted to the Bureau of Land Management (BLM) for approval that you intend to mine all or part of the Steese Highway where it crosses mining claim F63476. We further understand that you intend to commence mining operations as soon as the BLM grants approval, which is anticipated on or about June 11, 1999. Your mining operations would effectively destroy the section of the Steese Highway where it crosses your claim, and access to and from the points north would be cut off from the points south.

We remind you that you have no authorization or permit from the State of Alaska Department of Transportation and Public Facilities (DOT/PF) to encroach within the Steese Highway right-of-way. Mining activity within the right-of-way is unlawful under AS 19.25.200 et seq. Destruction or damage to the highway facility may also be a violation of AS 28.35.140 (unlawful obstruction or blocking of traffic) and AS 11.46.482 (criminal mischief in the second degree).

The State of Alaska asserts that its rights to the highway right-of-way where it crosses your mining claim F63476 are paramount to your mining claim. We understand that you may have a valid mining claim which was located approximately a year before the Steese Highway was constructed across the mining claim in 1971. However, the construction of the Steese Highway across your mining claim (owned apparently by R. G. Symons at the time) constituted a state assertion of possessory rights for the land, over all other claimants, except for the federal government. Further, when you became owner of F63476 in 1987, you took it with the knowledge that the Steese Highway crossed the mining claim. It is now too late to assert your interest in F63476 is paramount to the right-of-way. The statute of limitations, the doctrine of prescriptive rights, and the principles of estoppel and laches all operate to foreclose at this late date any assertion by the owner of F63476 of rights superior to the Steese Highway right-of-way.

The foregoing is not meant to suggest that under no circumstances would DOT/PF allow the area of the right-of-way to be mined. However, any mining activity in the right-of-way must be under permit from DOT/PF. A permit will not be unreasonably withheld, although DOT/PF will insist upon

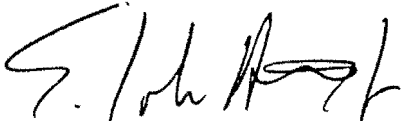
reasonable conditions to insure the access that the Steese Highway is intended to provide, and to insure the safety of the traveling public. We invite you to discuss with the DOT/PF encroachment officer your intentions so that reasonable permit conditions can be negotiated.

We caution you that if you nevertheless proceed to attempt to mine within the Steese Highway right-of-way without a permit from DOT/PF, the state will have no choice but to proceed to court for relief to stop the mining activity. We will also seek damages for any and all repairs necessitated by your mining activity. This is not a course of action we relish taking, and the state will only do so as a last resort. However, the one thing you should not do is to start mining within the Steese Highway right-of-way without a DOT/PF permit.

If you have an attorney, we urge you to discuss this matter with your attorney.¹ In any case we sincerely hope that a mutually satisfactory arrangement can be worked out, and your interest in mining and the public interest in the highway can both be accommodated. Please talk with the DOT/PF right-of-way section about securing the necessary permit. (John Bennett is the person you should initially contact. His telephone number is 451-5426.)

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
E. John Athens, Jr.
Assistant Attorney General

cc: John Bennett, DOT/PF
Nichelle Jacobson, Bureau of Land Management

EAATHENS\CASES\STEESEVOLSON.LT1

¹ We suggest that your attorney review the following: Weidner v. Dept. of Transp. & Pub. Fac., 860 P.2d 1205 (Alaska 1993); Duguid v. Best, 291 F.2d 235 (9th Cir. 1961); Fairbanks N. Star Bor. v. Lakeview Enter., 897 P.2d 47 (Alaska 1995).



Allan E. Curlee, Esq.
Bernice K. Hall, CLA
Certified Legal Assistant

OFFICE OF THE
ATTORNEY GENERAL

JUL 6 1999

1st JUDICIAL DISTRICT
STATE OF ALASKA

Telephone: (907) 451-8118
(888) 451-8188

Facsimile: (907) 451-8129

E-mail: lawoffice@curleelaw.com

July 2, 1999

E. John Athens
Assistant Attorney General
Office of the Attorney General
Department of Law
100 Cushman Street, Ste 400
Fairbanks, AK 99701

Re: Steven Olson v. State, Department of Transportation and Public Facilities
Steese Highway/Mining Claim F63476 Conflict
Our File No. 0070/002

Dear Mr. Athens:

Please be advised that I represent Steven Olson, the owner of the above referenced mining claim, in connection with the issues raised in your letter to Mr. Olson of June 7, 1999.

In connection with this matter, please provide me with those documents in your possession or in the possession of the State of Alaska which evidence your claimed ownership of or right of way in the land upon which Mr. Olson's mining claim lies. Please also advise me where I will be able to obtain drawings which reflect the claimed right of way.

Mr. Olson intends to seek the necessary permits to mine his property. Please advise me of the individual I should contact to initiate this process.

Finally, as a matter of notice, to the extent that your letter asserts that the State has the right or the power to prohibit Mr. Olson from mining his claim, Mr. Olson views that assertion to be an immediate and present taking of his property interests in the claim. This view is held notwithstanding the issues raised in your letter or any conditional language which may be found in your letter. Mr. Olson's decision to acquiesce in face of the threat of the use of the legal and physical force of the State and his decision to ascertain whether the permit which you discussed might be issued should not be deemed to be a waiver of any rights Mr. Olson may have, either to payment for the taking of his property rights or to payment for any delay which Mr. Olson may

E. John Athens
July 2, 1999
Page 2

face in exercise of his property rights. In order to thaw the soil, Mr. Olson needs to strip the overburden in advance of the time he intends to mine. By acquiescing to your demand, Mr. Olson may now have already suffered delay costs for the entirety of the season.

I await your response to my request for records.

Very truly yours,

ALLAN CURLEE, P. C.



Allan E. Curlee

AEC/bkh

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

July 8, 1999

Allan E. Curlee, Esq.
535 Second Avenue, Suite 211
Fairbanks, Alaska 99701

RECEIVED 8/11/99

Re: Steese Highway / Mining Claim conflict

JUL 13 1999

Dear Mr. Curlee:

Enclosed please find a copy of a title report prepared by Linda Heck of the Department of Transportation and Public Facilities. The title report is dated May 25, 1999, with an update dated June 2, 1999. The attachments to the title report are also enclosed. The BLM grant to the state does have a plat attached to it showing the relevant area of the Steese Highway right-of-way. There may be other "maps" at the DOT/PF offices which also depict this area. You and your client would be welcome to review these maps and any other public information at the DOT offices upon reasonable notice to DOT.

The person at DOT that should be initially contacted for an encroachment permit to mine within the Steese Highway right-of-way is John Bennett in the Right-of-Way Division. His telephone number is 451-5426. I think that you and your client will find him to be helpful and cooperative. As long as a safe and reasonable detour can be provided by your client within the confines of the right-of-way owned by the state, I am sure that an accommodation can be worked out so that a permit may be issued.

I emphasize that the state's willingness to issue your client an encroachment permit under appropriate terms and conditions should not be interpreted as a concession that your client has a right to mine where the Steese Highway is located, or may damage the highway facility. The state's rights for the Steese Highway are paramount to your client's mining claim. However, to the extent that DOT can accommodate under AS 19.25.200 et seq. [the encroachment statutes] your client's interest, and at the same time provide the safe public access intended by the Steese Highway, the state will do so.

I note that the Decision Record of the BLM with respect to its June 10, 1999 approval of your client's plan of operations, requires that:

Allan E. Curlee, Esq.
Re: Steese Highway/Mining Claim conflict

July 8, 1999
Page 2

A highway detour meeting ADOT's specifications must be constructed around the areas to be impacted by this mining plan before any disturbance will be authorized on or under the Steese Highway through FF-063476.

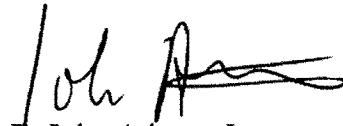
See No. 14 of Attachment 7-5 of the Decision Record. This is a condition imposed by the BLM before mining within the right-of-way can take place. Thus, a detour is not merely a unilateral condition imposed by the state--it is also one of the operating conditions imposed on your client by the federal government under its regulatory authority.

DOT wants an amicable resolution, and will work towards that end. I think that if your client comes to DOT with an open mind and spirit of cooperation, a way will be found to accommodate both your client's and the state's interest.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



E. John Athens, Jr.
Assistant Attorney General

EJA/maf

cc: John Bennett, DOT/PF