

Bennett, John F (DOT)

From: Sansone, Jerri E (DNR)
Sent: Wednesday, January 11, 2012 7:34 AM
To: Bennett, John F (DOT)
Cc: Verges, Jessica M (DNR)
Subject: Levshakoff Allotment AA-7589

John – this has been a source of contention with us as our ‘protests’ are most times tossed even if we give plenty of evidence to support it. Though BLM can’t reserve a 17(b) on an allotment (no authority to do so) they should be reserving, and have reserved in the past though not often, other easements if they pre-date the allotment. Just because BLM doesn’t recognize an RST it’s still a trail.

Jessica has clarified what we need to provide to BLM on their required wording – see attached – though I have seen where this has been done and it’s still dismissed.

Stephanie Clusiau from our PAAD unit made the below comments:

The attached decision directs BLM to make a 17b subject to an RS 2477 “if valid” if the 17b overlays an RST . This can also be applied to allotments and trail reservations.

In regards to Trails, Easements, and Rights-of-way: Though BLM has no authority to adjudicate rights that are determined by State law, they cannot ignore the public use that occurred on specific trails that we believe qualified these trails as RST’s. The public use that occurred is in direct conflict with the exclusive use required to approve a Native allotment under the 1906 Act. BLM has to consider the public use that occurred during the claimed use & occupancy of the Native applicant. When this is the case, BLM is required either to make the Native allotment subject to an appropriate trail reservation or reject the allotment application based on the lack of exclusive use.

The attached decision directs BLM to make a 17b subject to an RS 2477 “if valid” if the 17b overlays an RST . This can also be applied to allotments and trail reservations.

If the State has provided sufficient evidence in their protest of trail use pre-dating the onset of applicant’s use & occupancy and BLM has not protected that trail use, then the State has grounds for an appeal.

BLM has always been evasive in their adjudication. Of course giving them all the verbiage they request will satisfy them, but when we give them more evidence than what they expect, it sends the average adjudicator into a frenzy wondering what they’re going to do with the additional information. The additional evidence we provide to BLM makes the adjudicator step outside the “box” of standard operating procedures and provokes them into considering the evidence provided. The more information you give them, no matter how menial, the better our chances are of receiving trail reservations.

We’re looking at the decision and will be deciding if we should appeal it or not if we have enough evidence to proceed – will keep you posted.

Jerri

From: Bennett, John F (DOT)
Sent: Tuesday, January 10, 2012 1:07 PM
To: Sansone, Jerri E (DNR)
Subject: Levshakoff Allotment AA-7589

Jerri, I received a copy of a BLM decision for the Levshakoff Allotment the other day and had a question. With regard to RST 1413 which runs through the allotment, BLM says that the RS2477 ROW will not be listed in the Allotment Certificate

as the Federal government has no authority to adjudicate rights that are determined by State law. While it's nice that they bow to State law for adjudication of RS2477 trails in Alaska, I don't believe that State law has authority to adjudicate any land issues over a restricted allotment. So what exactly does BLM expect us to do and what options does the state have to ensure that public users won't be charged with trespass on the allotment. Just curious. JohnB

John F. Bennett, PLS, SR/WA | Chief, Right of Way | Alaska Department of Transportation, Northern Region

2301 Peger Road; Fairbanks, AK 99709-5399 | 📞: 907.451.5423 | 📠: 907.451.5411 | ✉️: johnf.bennett@alaska.gov