

John Bennett

From: John Bennett
Sent: Monday, March 1, 2021 10:41 AM
To: Karen Tilton
Subject: RE: SLE memo

Karen: Below is the text from the Supreme Court opinion so I would agree that acceptance of the 100' width for an RS2477 (Trail or SLE) could be fixed by the first PLO that defined a "Local" road width. That would be PLO 601 on 8/10/49. So my next question is why the MHT memo focused on the 1963 date of AS 19.10.015 as opposed to the PLO 601 date. My first thought was that RS2477 was a dedication requiring both an offer and acceptance. The trails are generally accepted by use while the SLEs are generally considered to be accepted by some Territorial or State legislation. AS 19.10.015 would certainly fit a formal re-acceptance of the RS2477 grant by legislation. But if that is the limiting feature, why did both the Superior and Supreme courts appear to indicate that the PLO definition of width was sufficient? This would really make a lot of difference when applying widths for both RS2477 trails and SLEs over what would now be private properties. And as the Court was just validating what it believes was always the justification for the 100' width, it seems that it could be applied retroactively to lands where previously federal SLEs were determined to be "4 rods wide" and trails limited to the "ditch to ditch" width. As far as application goes, this is a bigger revelation than the McCarrey v. Kaylor decision that Small Tract ROW were actually common law dedications and not express reservations.

I did see that when Kent argued his case for width in the Klutina (Ahtna) case, he limited it to the width as determined by AS 19.10.015. I'm really looking forward the Supreme Court decision on that one and I suspect that it should be arriving any week now.

"But we agree with the superior court that the 100-foot width was dictated both by federal land orders and by AS 19.10.015"

I sent an email to Sean Lynch as he often works on issues for the Commissioner's Office and asked whether reviewed the MHT Agreement. He responded that he did not but was interested in my question and forwarded it to Heather (Statewide ROW Chief) and Jeff Stark (DOT Supervisory AAG.) Can't wait for an answer! JohnB

From: Karen Tilton
Sent: Sunday, February 28, 2021 4:50 PM
To: John Bennett <JBennett@rmconsult.com>
Cc: John Kerr <john.kerr@survbase.com>
Subject: Re: SLE memo

I knew I had read a draft of some kind. As soon as I read your comment about changing the SLE chart, I was reminded of the Dickson case, which really expanded the interpretation of acceptance of the RS 2477 grant to reflect the dates of the PLOs - the Cowart homestead entry was in 1958, therefore AS 19.10.015 couldn't apply. However the court found that 19.10.015 codified the width already set by the federal orders (see pg 42) That case (attached) went to the Supreme Court on the matter of fees I believe but was not contradicted as to the decision. So really, doesn't state law set by Dickson say that the acceptance of a 100' width in Alaska goes back to the date of the PLOs?

When Kent Sullivan proposed this argument, I was skeptical but it apparently worked.

Karen F. Tilton, PLS - Group Manager – Right of Way Services
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From: John Bennett
Sent: Saturday, February 27, 2021 10:39 AM
To: Karen Tilton
Cc: John Kerr
Subject: RE: SLE memo

Karen – Back on 11/24/20, Tim Sprout sent me a snippet of what has resulted in this MHTA/DNR/DOT SLE memo and asked for comments as to how it might affect DOT (Specifically paragraph 5). I had a couple of comments regarding private utilities within SLEs that were under DOT management and the changing ways that DNR in the past had approved DOT use of an SLE over state lands. I think I may have forwarded that to you. I’ve just read through the finalized 12/30/20. Either they didn’t consider my comments significant or more likely, given that the month of December doesn’t really exist on the State calendar, they just wrapped up the memo they had in draft on 11/24 and went with it. But that’s not my issue today. What I’m seeing for the first time is footnote No. 2 in the SLE memo. Now either dementia is setting in or one cup of coffee in the morning is insufficient to get my brain cells working but I think I’m seeing something here for the first time that I have never seen before. Worse yet, they may have a point.

FN2 says “This is the date (April 7, 1963) AS 19.10.015 was enacted, which provides that ‘All officially proposed and existing highways on public land not reserved for public uses are 100 feet wide’. **This modified the width of federal section line easement that were accepted under AS 19.10.010, where the land was still unreserved federal land”.**

If you remember, we generally believe AS 19.10.015 was implemented as a result of an adverse ruling against the Dept. of Highways in a condemnation of a parcel in the 1960’s reconstruction of Farmer’s Loop Road. The court said that as there was no “officially” accepted width for an RS2477 trail, he would only allow “ditch to ditch”. To avoid this in the future, AS 19.10.015 would assign a 100’ width to future assertions of RS2477 trail easements.

What the MHT/DNR/DOT memo FN2 tells me is that AS 19.10.015 also should be considered as a modification to the Territorial April 5, 1923 acceptance of the RS2477 grant. So not only would RS2477 trails be accepted as 100’ in width but also federal SLEs! This would suggest that the SLE chart for federal SLE’s should be modified by inserting the April 7, 1963 date between the March 21, 1953 and December 14, 1968 date to show where federal SLEs were accepted at 66’ before the date and 100’ after the date!

I’m trying to mentally go back and review why this wasn’t obvious before. First, that chart existed long before I was involved and was typically handed out at the BLM and DNR lands offices. The initial 1923 SLE acceptance and then 1953 reacceptance was specific to section line easements and made no mention of trails. But the AS 19.10.015 does not specify RS2477, SLE’s or Trails. So the presumption of the memo is that as it is not specific, is that it can be applied to “all officially proposed and existing highways”, including RS2477 trails and SLEs.

So as this email is going also to JohnK – do either of you have any thoughts on this or am I the only one who did not find this expansion of SLE width intuitively obvious? I think I should spend the rest of the day reading one of my trashy novels because I think this ROW stuff is now beyond me. Have a great day, both of you. JohnB

John F. Bennett, PLS, SR/WA *Senior Land Surveyor – Right of Way Services*

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From: Karen Tilton
Sent: Friday, February 26, 2021 3:51 PM
To: John Bennett <JBennett@rmconsult.com>
Subject: Fw: SLE memo

I think I knew this agreement was in the works but I had not seen the signed version. What do you think?

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From: John B. Kerr <John.Kerr@survbase.com>
Sent: Friday, February 26, 2021 2:47 PM
To: Karen Tilton
Subject: FW: SLE memo

Hi Karen,

I hope all is well with you and yours.

I was sorting through some email and thought that I'd share this with you – I'm sure that you've already seen this but I wanted to be sure.

They've kicked it further down the road...

Take care and enjoy the daylight gain!

John Kerr, PLS
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From: Green, Jeffrey C (DNR) <jeffrey.green@alaska.gov>
Sent: Wednesday, January 6, 2021 8:54 AM
To: John B. Kerr <John.Kerr@survbase.com>
Subject: SLE memo

Hi John,

I thought you might find this interesting since you had worked on the SLE issue for Iron Horse Run. The SLE concurrence document that our office has been working on with DOTPF and DNR has finally come to fruition. Hope you're well.



Jeff Green

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