

# RS 2477: Impacts on Private Property

## Alaska

### Thomas Price's Farm, Homer, AK

Thomas Price, Jr. owns a 160-acre farm near Homer, Alaska. During the snowmachine season, several hundred snowmachiners ride across the entire length of Price's land on a trail that was originally an oil exploration seismic line. When he tried to prevent the snowmachine users from crossing his farm, they filed suit against Mr. Price, claiming they had established a public right-of-way (a prescriptive easement) by virtue of their unopposed use of this trail for a period of ten years or more, from 1978 to the present.

During trial court, Judge Harold Brown ruled that, regardless of whether the snowmachiners had established a prescriptive easement, the seismic line was a public right-of-way under RS 2477. Neither the snowmachiners nor Mr. Price had raised a claim regarding RS 2477 in the lawsuit. Price asked for reconsideration on this issue and was denied; the Judge also held alternatively that the snowmachiners had established a public right-of-way by prescription on the seismic line.

Mr. Price has asked Judge Brown to reconsider his alternative ruling, asserting that since 1978, when he first applied to purchase the agriculture rights to his farm from the State, until 1998, when he obtained all rights from the State (subject to an agricultural use covenant), the State had owned all surface rights to this tract of land, with the exception of the agricultural development rights it conveyed to Price. Consequently, Mr. Price asserted that, based on State law, the snowmachiners could not have established a prescriptive easement on land owned by the State. The Judge denied reconsideration on this issue and Price has appealed both legal issues to the Alaska Supreme Court.

This case, while still unresolved, illustrates the lengths to which snowmachiners may go to validate their access routes and the frustrations private landowners face when their land is accessed without permission by hundreds of recreational snowmachiners. There are hundreds of miles of old seismic lines in Alaska, haphazardly crossing the landscape. Where these lines bisect land that is now private property, questions of snowmachiners' claims of vested access entitlement are bound to conflict with the homeowners personal use and enjoyment of their land. Unfortunately, as in the case of Mr. Price's farm, the State of Alaska has made grants to snowmachine clubs to maintain and improve trails on seismic lines, without first determining whether public rights-of-way legally exist.

### Fisher v. Golden Valley Electric Association (1983).

In this court case, a utility company sought recognition of an RS 2477 and the right to use the right-of-way for a utility corridor, even though there were no plans to utilize the right-of-way for construction of a road. The court found that "utility use of an otherwise unused RS 2477 right-of-way for a powerline is permitted notwithstanding the objections of the underlying fee owner of the land."

### Fitzgerald v. Puddicombe (1997).

Craig Puddicombe purchased US Survey 5265 in 1979, from the original homesteader. Neither the survey, nor the deed of conveyance indicated any right-of-way reservation on the property. Several miners had staked claims on land upslope of Mr. Puddicombe's property. They claimed that evidence of historic trails across the parcel established a right-of-way over the land under RS 2477. Mr. Puddicombe sought to "quiet title" and eliminate the RS 2477 claim. Based on an extensive analysis by state agencies and court testimony from long-time area residents, the Superior Court determined that no RS 2477 existed. Nevertheless, the Alaska Supreme Court overruled and recognized the RS 2477, and remanded the case to the Superior Court to determine the exact scope and location of the right-of-way.

## **Colorado**

### The Chamberlin Family's Home, Boulder, CO

In the late 1990s, Ms. AJ Chamberlin and her family purchased a vacant lot in the mountains west of Boulder, Colorado. The land they bought was not subject to any easements or recorded rights-of-way, and no County roads crossed the property. Neither the County nor any other person maintained any routes through or across the property. The Chamberlins built their home on the vacant land and they now live in the home year-round.

To the family's surprise, some recreation users claim that a 19<sup>th</sup> Century mining path runs through the property, and that R.S. 2477 gives anyone the right to use it. These users have ignored "No Trespassing" signs on the Chamberlin's property and illegally cross the land at all times of the day. The trespassers have also torn down and defaced signs. Neighbors have suffered abuse for restricting access across their private land: trespassers killed one neighbor's dog and smashed the window of another neighbor's car. The recreation users have also threatened to bring lawsuits to turn the Chamberlin's driveway into a jeep trail with access by the general public.

The trespassing and proposals to put access through their private property has damaged the Chamberlin family's enjoyment of the property, as well as its economic value.

### The Elrick-Boslough Ranch, Boulder County, Colorado.

Maya Elrick's family has owned a ranch next to Balarat Creek in Boulder County, Colorado for more than 40 years. Over the last decade, her husband, Mark Boslough, purchased a number of patented mining claims along the creek. A 1.5 mile pedestrian trail (known as the "Barking Dog Trail" after a nearby rock formation) followed the route of a private drive that had been built with private funds across the private property by a previous owner. The current owners invited hikers across the property, but posted signs to keep motorized vehicles out. The trail was never shown on any maps prior to the 1957 and there is no recorded easement or right-of-way for a public highway at the trail-site.

In the 1990s, organized jeep clubs began trespassing on the Barking Dog Trail, driving through the creek, destroying vegetation, and dumping oil into the stream. Mr. Boslough closed the trailhead to further motorized trespassing with physical barriers. On June 25, 2000, a group of vandals in jeeps trespassed on the trail, removed obstructions, tore

down signs, spray-painted rocks, and purposefully ripped out seedling trees and shrubs that Mr. Boslough (working with the local soil conservation district) had recently spent hundreds of dollars planting as part of a watershed restoration project. Vernon Brandt, a member of the Trailridge Runners 4WD Club and representative of the Mile-Hi Jeep Club, has posted threatening emails on a website in which others have tried to intimidate Boslough's family and even threatened to lynch him. This year, Mr. Brandt has solicited funds to obtain heavy equipment to bulldoze through the private property sometime in the near future.

The off-road vehicle users claim that their violation of private property is justified because the Barking Dog Trail is open as a public highway under RS 2477. They make this allegation despite the fact that county records, historic maps, and statements by prior property owners clearly demonstrate the trail was never constructed over public land (a requirement for an R.S. 2477 right-of-way to exist). Unfortunately, despite the bogus nature of their claims, the very existence of RS 2477 has emboldened the off-road vehicle users in this area to trespass and destroy private lands.

## **New Mexico**

### The Hoffman Family Home, Catron County, New Mexico

In 1976, Don Hoffman and his family bought a cabin on 13 acres of private land along Dry Blue Creek in Catron County, New Mexico. The Hoffman's home is part of a 48-acre subdivision surrounded by the Gila National Forest. Six other families live in the 48-acre area. The main access route used by all of the families is a road from Alpine, Arizona that dead-ends at the subdivision.

Another route—the Dry Blue Road—had been used to access the properties, but that route was washed out in a flood 1983. In 1984, the Forest Service officially closed the road to protect forest resources. The agency also spent thousands of dollars to restore the landscape damaged by the washed-out road. Dry Blue Creek, along which this route used to run, now serves as habitat for a native endangered fish.

In May 2001, Catron County adopted a resolution claiming the Dry Blue Road as a county road under authority of R.S. 2477, with the purpose of reopening the road. They County claimed the road was needed to provide access to fire and ambulance to the residents on Dry Blue Creek. All of the homeowners living in the 48-acre subdivision along Dry Blue Creek wrote the County that they did not need the road reopened for emergency services since they had quicker, more dependable access through the route from Alpine, AZ. The landowners were unanimous in not wanting the Dry Blue Road reopened under any authority, in part because they enjoy the solitude of living on a dead-end road.

Catron County appears poised to pursue its road building agenda, however, despite the fact that the route is unanimously opposed by local landowners, it would require reconstructing a road that was purposefully closed by the Forest Service, and additional access would serve no purpose.

## Utah

### The Smith Family Home, Kanab, Utah.

In 1976, the Smith family bought land—approximately 1,000 acres—from a rancher who had purchased the land from BLM in the 1960s. The family returned home one day in 1999 to find the Kane County attorney and road crew supervisor cutting the bolts off their gate and tearing down their “No Trespassing” signs. The County officials opened the gates and declared the property an RS 2477 highway. Since that time, the family and County have gone back and forth, closing the gates and cutting off the locks. Despite these tussles, there has not been a formal resolution to this situation.

During the times when the County has cut the locks and opened the gate to the Smith’s private property, off-road vehicles have trespassed on the land. The family had purchased the ranch with the intention of rehabilitating the environmental damage that occurred during the days when the property was a working ranch. Unfortunately, the County encouraged illegal ORV use has led to additional degradation of the property, including new tracks and soil erosion.

### The Platt Property, San Juan County, Utah.

In 1997, Ken Platt and his wife purchased vacant retirement property in southeastern Utah’s San Juan County. Even though a primitive track crossed the property, they finalized the purchase of the land when the title search showed no legal access across the property.

In early 2002, the Platt’s noticed an all-terrain vehicle had been driven on the primitive track. The perpetrator took their locked gate off the hinges, drove on the track, and then replaced the gate. The County has asserted the track is an R.S. 2477 right-of-way. The Platt’s are concerned they may not be allowed constitutional rights of due process and that the County may be allowed to plow through their private land.

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