

State assertion of road routes called 'devastating'

by Jeff Richardson
Tundra Times staff

A recent federal analysis of rights-of-way claimed by the State of Alaska predicts substantial impacts on subsistence resources if the claims are recognized through legislative or judicial action.

National Park Service officials note that aggressive state right-of-way policies—currently being advocated in federal court—would have a “devastating” impact on fish, wildlife and other critical resources, virtually nullifying the land protection established by Congress in the Alaska National Interest Lands Conservation Act in 1980. The economic viability of most of the state’s more than 200 Native villages depend heavily on those protected resources.

Subsistence resources decline

“Experience in Arctic environments indicates that the availability of subsistence resources declines over time with expanding road systems,” states a section authored by the U.S. Fish and Wildlife Service.

The analysis only covers lands administered by the USFWS and National Park Service, not units managed by the U.S. Forest Service or Bureau of Land Management.

“In August 1995, the State of Alaska identified 99 routes on 14 National Wildlife Refuges in Alaska as possible public

‘highway’ right-of-ways under RS 2477,” the report states. “Most of the claimed ‘highways’ are listed as foot and dogsled trails. The segments inside refuge boundaries range from one mile to 176 miles in length.”

Section line time bomb

The Park Service analysis warns that state actions may set a dangerous precedent:

“The State also contends that rights-of-way were accepted on all section lines by legislative proclamation. If this position is validated, the mileage of RS 2477 rights-of-way in any Alaska national park unit would be limited only by the number of square miles within its boundaries. Furthermore, pending the current reconsideration of a case (*Schultz*) by the 9th Circuit Federal Court of Appeals, the State may argue that use of a right-of-way need not remain on an actual section line. If section lines are recognized to be valid RS 2477 rights-of-way, Alaska national park units will be completely covered by north/south and east/west rights of way at one-mile intervals,” the report states.

Delegation pursues aggressive access

The state claims are based on Revised Statute 2477, passed by Congress in 1866. The law simply states: “The right-of-way for the construction of highways over public lands, not reserved for public purposes, is hereby granted.” RS 2477 was repealed

• State assertion of road routes called 'devastating'

1

in 1976, but Congress said that right-of-ways used before the law's revocation could be asserted and approved. The Dept. of Interior has been trying to create criteria and procedures for claiming the access routes, but have been blocked by Alaska's Congressional delegation and their conservative allies. They claim that federal land conservation units restrict legitimate access to state land and resources, despite the fact that ANCSA and ANILCA both set policies for access across federal and Native lands. Although conflicts over such right-of-way claims are usually fought in the courts, road advocates are creating substantial pressure for a sort of "blanket" approval in the political arena.

Knowles' position

Documentation of state claims began in earnest under the Hickel Administration. Although Gov. Tony Knowles has generally endorsed the Hickel position on pro-

posed RS 2477 regulations, Natural Resources Commissioner John Shively has said the issue is under ongoing review. He said state officials want to have the authority to manage activities in the approved rights-of-way, but the governor wants a rational approach to the problem.

Impacts summarized

The Dept. of Interior report summarizes projected impacts of hundreds of state right-of-way claims affecting thousands of miles of possible road routes across federal and Native-owned land: loss of habitat and/or reductions or displacements of species used for subsistence; increased, adverse competition for local resources currently used for subsistence; and cultural resources located within a right-of-way will be destroyed if road construction occurs (due to vandalism and looting).

The analysis examines impacts of right-of-way assertions on national wildlife refuges and national parks, including two

detailed case studies focusing on Togiak and Yukon Flats National Wildlife Refuges. In the Togiak Refuge, the state has claimed 16,160 miles of section line easements. In addition, 140 miles of prospective highway right-of-way have been claimed, of which more than a hundred miles would traverse Native allotment or Native corporation land. About 44 miles would traverse refuge land.

On the Yukon Flats, the state has laid claim to 35,896 miles of section line easements. About 350 miles of proposed road access would cross Native land. Another 350 miles would cross refuge lands.

In both cases, the refuges provide protection to critical subsistence fish and wildlife upon which villages depend for their livelihood and cultural integrity.