

# Access feud erupts, Native lands at risk

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by Tundra Times staff

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Was it just a big misunderstanding, or a major parting of the ways over policy?

According to state officials, Interior Secretary Bruce Babbitt has raised the stakes and fired a new round in the long-simmering debate over how states may assert right-of-way claims to cross federal lands under Revised Statute 2477. A memo signed by Babbitt last month outlines the department's philosophy regarding such claims, and specifically rescinds an old approach adopted during the Reagan administration.

Eventually, disposition of an estimated 500 claims for recognition of access routes across federal lands will have profound—and potentially devastating—effects on Native villages and subsistence hunting and fishing areas.

State officials seemed both angry

and surprised; they felt they had an implicit understanding that there was room for the state and federal governments to negotiate on some of their differences over procedures and criteria for recognizing right-of-way claims. Now, they see the memo as a gauntlet that must be taken up to protect the state's economic interests.

Generally, the posture of the Clinton Administration on right-of-way claims by states has been more restrictive than preceding Republican administrations. Efforts by Babbitt to draft new RS 2477 regulations in 1994 ran afoul of Alaska's Congressional delegation. Members of the delegation persuaded their colleagues to block further work on the regulations.

In the memo, Babbitt explains why the policy was put into writing: "States . . . asserting that . . . rights-of-way ex-

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ist on federal lands can . . . file a lawsuit in federal court seeking to establish the validity of that assertion. In the alternative or in advance of filing such a lawsuit, the Department of the Interior may also be asked to give its views on such assertions. . . . The purpose of this memo is to revoke the 1988 policy and establish a revised policy for carrying out any determinations the Department might be called upon to make regarding R.S. 2477."

In the meantime, Babbitt wrote, his previous instruction to "defer any processing of R.S. 2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations," until final rules have been developed "is still in effect."

In essence, state officials say, they don't buy the explanation and seem to feel that Interior is up to something. The memo prompted a joint hearing last week by the House and Senate resources committees of the state legislature, with

lawmakers demanding to know what the Knowles Administration intended to do about it.

In an interview with *Tundra Times*, Attorney General Bruce Botelho called the Babbitt's move "antagonistic" to the interests of the state. He said he feels a strong response is needed because the very existence of the memo, i.e., the policy in written form, could jeopardize state right-of-way claims in future litigation.

Natural Resources Commissioner John Shively said the move constituted an "escalation" of the issue.

"We see it as a change of traditional policy," he said, adding that it showed that Interior didn't want to deal in a meaningful way with state-federal policy differences.

Botelho and Shively told lawmakers the Knowles Administration would fight Interior with three initiatives: trying to persuade Babbitt to repudiate the memo (which he has already apparently declined to do), asking the Congressional delegation to further involve itself in the issue, and preparing sev-

eral right-of-way test cases for court. They said they could be ready to file suit within 30 days.

According to Botelho, the key issues to litigate are the statute of limitations for filing claims, the definition of key terms such as highway and construction which bear directly on the assertion of validity, and Interior's current stance on RS 2477 claims.

Interior officials were surprised at the reaction generated by the memo.

Babbitt's Alaskan representative, Deborah Williams, said there has been no change in the Administration's RS 2477 philosophy.

"This has been what we've been saying for the last four years — there are absolutely no surprises," said Williams.

Shively said he would still be interested in sitting down with the Native and environmental communities to discuss potential test cases that would allow issues to be resolved in an orderly way.