

material. The definitions are not how you or I would interpret, but how the various courts have decided.

The statutory period must be kept in mind. In general, for Idaho and Montana it is 5 years, 10 years for North Dakota, and 20 years for South Dakota.

If the Court decides that a right has been established, it becomes a property right to be held until relinquished by the U.S.

The U.S. would acquire a right to the extent of historic use only. Therefore, it is important to establish what was the extent of "historic use". Maintenance records are a must in proving our case.

The location of the facility (road/trail) is important. It must remain the same but could move if acquiescence by the landowner could be shown.

Advantages of: Prescriptive Rights

Condemnation

No Compensation.

Recordable document.

Shorter time period to pursue rights.

Right-of-way set out in the easement.

✓(?)

PROTECTION OF RIGHTS:

The interests of the United States in the road and trail system must be protected. I am certain that each Forest has roads/trails where access may be blocked by some means.

If a Forest discovers that use (and that use can be supported by historic evidence) of a road/trail is being challenged, the landowner must be contacted, informing them that the US claims an interest in the facility and that they are in trespass. You should also require removal of any obstacle within a reasonable time period. If the landowner refuses to comply, the Forest should remove the obstacle and inform the owner that you are protecting the interest of the United States in the system. If the landowner is persistent in blocking access, legal action must be taken against the party. For example:

If a right-of-way is fenced, notify the landowners to remove the fence. If they refuse, remove the fence and notify the landowners. If they persist in blocking access, legal action must be taken against the owners.

If a road is constructed across a trail, notify the landowners and require that the trail be reestablished. If they refuse, bring suit against the landowners.

In all cases, the statute of limitation for trespass must be considered, as the statutory period begins when Forest personnel became aware of the trespass.

TO PROTECT THE INTEREST OF THE UNITED STATES, YOU SHOULD GIVE SERIOUS CONSIDERATION TO FILING A STATEMENT OF INTEREST ON ALL TRAILS AND ROADS WHERE

✱ ✓

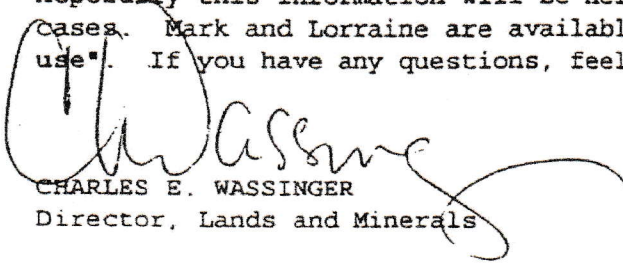
THE FOREST SERVICE HAS NOT HAD RECORDED EASEMENTS. IF EVIDENCE INDICATES THAT
A RIGHT CAN BE ESTABLISHED.

To start the process, the Forest must inventory their road/trail system.

Criteria for filing must be developed; i.e. documented historic use, no documented historic use but could obtain affidavits, and possible ownership change. Based on the criteria, priorities can be set for filing the statement of interests.

Any statement of interest proposals must be reviewed by OGC before filing.

Hopefully this information will be helpful in pursuing your rights-of-way cases. Mark and Lorraine are available to assist in determining "historic use". If you have any questions, feel free to contact Gary Johnson at 329-3600.



CHARLES E. WASSINGER
Director, Lands and Minerals

cc: OGC
Asst. US Attorney (Billings)
RO-WRHP
RO ENG

GS ~~GS~~ 3/18/91
J M W _____
R M _____

FOREST SERVICE MANUAL
MISSOULA, MONTANA

TITLE 5400 - LANDOWNERSHIP

R-1 Supplement No. 5400-91-3

Effective March 20, 1991

NEW POSTING NOTICE: Supplements to this title are numbered consecutively. Post by document name. Remove entire document and replace with this supplement. Retain this transmittal as the first page of this document.

<u>Document Name</u>	<u>Superseded</u>	<u>New</u>
	<u>(Number of Pages)</u>	
5460	16	16

Digest:

5460.43 - Changes delegation of authority to Director of Lands and Minerals and clarifies authority to terminate easements and submission of acquisition inventory and schedules.

JOHN W. MUMMA
Regional Forester

TITLE 5400 - LANDOWNERSHIP
R-1 SUPPLEMENT NO. 5400-91-3
EFFECTIVE 03/20/91

5460.11 - Road and Trail Right-of-Way Acquisition

Prior to World War II, the appropriation of private property for public use was often the result of physical taking, without the formality of a condemnation action, leaving the landowner to sue for compensation under the Tucker Act. For 6 years following construction, each landowner had a right under the Tucker Act to contest the construction and use of the facility or bring an action to recover damages. That action is now barred.

Since an appropriated right-of-way easement is not covered by a written recorded document, the United States ownership shall not be assigned to another party until a formal easement document is acquired. Another problem with an appropriated easement is the right-of-way easement width is subject to dispute. The width (area) occupied by the facility, including that needed for maintenance (that is, clearing, cuts and fills, safety features) at the time of taking, is generally the width of the right-of-way easement. The width occupied by the road/trail today may not be the width of the right-of-way easement.

Nonuse of a right-of-way condemned (appropriated) by the United States does not constitute abandonment or termination of the right-of-way easement.

When the United States has not perfected appropriated easement rights, the Forest Service has no legal authority for the following until the necessary rights-of-way are acquired:

- a. Spend FR&T dollars for construction or reconstruction.
- b. Nominate trails for inclusion in the National Recreation Trails System.

5460.3 - Policy

8. Solve road and trail title question as soon as feasible.

Three legal interest levels for acquisition of rights-of-way for the long-existing roads and trails across non-Federal lands are:

Level I - The Forest Service assumes Federal road and trail easements have been acquired by prescription or appropriation without benefit of status checks.

Level II - The Forest Service assumes Federal road and trail easements have been acquired by prescription or appropriation when based on status checks.

Status sources of evidence include: (1) retired Forest Service employees who had facilities maintenance and construction responsibilities; (2) "old timers" such as prospectors, loggers, bridge trolls, ranchers, trappers, and CCC corpsmen; (3) historians; (4) books on local history;

(5) vintage maps and aerial photographs; (6) USGS records and plats; (7) Forest Service records on capital investment, road and trail logs, grazing allotment plans, tree plantations, Land Classification Reports, Forest scrapbooks; and (8) old newspapers.

Whenever OGC advice and assistance is needed, the case should be submitted to the Regional Office for coordination with OGC.

Level III - The Forest Service perfects titles by: (1) acquiring road or trail easement deeds (FSH 5409.17, Chapter 10) from the present landowners; (2) initiating new, formal condemnation actions; or (3) initiating quiet title suits in the courts.

9. Statement of Interest. Whenever an action or threat interferes with continued use and management of a road or trail, and the Forest Service has not perfected title, the following actions need to be taken by the Forest Supervisor:

a. Evaluate status evidence that the United States historically constructed, used, managed and/or maintained the facility.

b. If supported by historical evidence, execute a Statement of Interest, using Exhibit 1 as a guide. The Statement of Interest will be recorded in the county records. (Both OGC and the U.S. Attorney's Office support use of a Statement of Interest when supported by historical evidence.)

c. Notify the private landowner by certified mail that the United States has acquired an easement across the property.

d. Submit the recorded original to the Regional Office for the permanent files.

*See previous
GNF samples*

Exhibit 1

STATEMENT OF INTEREST

The UNITED STATES OF AMERICA hereby states that it has and claims an EASEMENT for the (Insert Name and No. of Road or Trail) over and across the following described real property located in _____ County, State of _____:

Township XX, XXXXXX, Range XX, XXXXXX, P.M., MT.
Section XX, -- insert legal description in this area

This statement is being recorded to:

1. Reaffirm that the UNITED STATES OF AMERICA does claim an EASEMENT under the jurisdiction of the Forest Service, and
2. Establish that said EASEMENT for (Insert Name and No. of Road or Trail) traverses the above described real property as shown on Exhibit A attached hereto.

Further inquiry can be made by contacting the Forest Supervisor, _____ National Forest, at _____ (address).

Dated this _____ day of _____, 19____.

UNITED STATES OF AMERICA

By:

Forest Supervisor
_____ National Forest
Department of Agriculture