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Sent:	Thursday, September 5, 2002 6:30 AM
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Cc:	Governor Knowles; David Ramseur; Michael Tubman; Sally Rue
Subject:	CONFIDENTIAL: Interior Department/RS-2477
Attachments:	jwkatz.vcf

Yesterday, the Interior Department convened a meeting of governmental and private representatives to discuss a revised policy for addressing right of way assertions under RS-2477. No paper was distributed, and it is not clear when the policy will be announced. The policy is embodied in a memorandum to be signed by Secretary Norton; a formal rule making process under the APA is not contemplated.

The revised approach will repeal the Clinton policy which, in essence, required that claimants under RS-2477 prove the existence of a formal highway created by construction activity of significant scope. The new policy, which is quite similar to a memorandum issued by then Assistant Secretary Steve Griles several years ago, would recognize roads and trails created by vehicular and non-vehicular traffic, including horses, pedestrians, dog sleds, etc. The width of the "highway" would be consistent with its purpose and use. Also, the highway could include reasonable appurtenances, such as rest stops and culverts.

In redefining the terms "highway" and "construction," the new policy will take cognizance of traditional use patterns in Alaska.
Accordingly, from what I can tell, the policy is quite consistent with positions the State has advocated previously.
Because the policy is likely to lead to many more successful assertions under RS-2477, it will be quite controversial, with the environmental community in strong opposition. In view of a favorable judicial situation, the Department intends to apply the policy initially in South Dakota (Eight Circuit Court of Appeals).

More to come when the official documents become available.