

UNITED STATES GOVERNMENT

Memorandum

TO : DM-A

DATE: 9 MAY 1978

FROM : Chief, Division of Resource Management

In reply refer to:
2098 (013)

SUBJECT: 44 LD 513, RS 2477 in Alaska

Attached is a staff report prepared in response to a series of recurring questions concerning the nature and application of 44 LD 513, RS 2477 and section line easements in Alaska. This report was prepared by Pat Beckley of my staff and has been reviewed by Robert Mothershed of the Regional Solicitor's staff.



Enclosure:
Report with enclosures

cc:
DMF (CRG)

44 LD 513

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REPORT
ON
44 LD 513, RS 2477
AND
SECTION LINE EASEMENTS
IN
ALASKA

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OCTOBER 1977

TERRY HASSET 271-3404
BRANCH OF EASEMENT IDENTIFICATION
ANCHORAGE, BLM.

I. 44 LD 513

44 LD 513 is an abbreviation that refers to a letter of instruction found in volume 44, Land Decisions, page 513, dated January 13, 1916. This instruction provides that where telephone lines, roads, trails, bridges and similar improvements have been constructed on federal lands with federal monies and are being maintained by and for the United States, the lands needed for such improvements may be retained for the use of the United States through the insertion of a reservation in final certificates and subsequent patents.

A good discussion of the 44 LD 513 may be found in the June 30, 1964, Regional Solicitor's memo on this subject (attached).

II. QUESTIONS ABOUT 44 LD 513

1. What actually makes the 44 LD 513 reservation effective?

Two actions are required:

- a. Legislation or appropriation which authorizes federal money for a proposed project or existing federal projects where money has already been spent in construction.

b. There must be a showing (evidence) on the ground of the project. If the road or trail is existing, a notation on the land records will evidence the appropriation. If the road, etc., is not existing or in such disrepair so as to require extensive repair before use, the appropriation would require some action on-the-ground, i.e., staking of a centerline survey.

2. If federal monies were expended and construction done, but no notation is made on the records, is there still a 44 LD 513 right-of-way?

Yes, the actual showing on the ground constitutes the appropriation and thereby sets the effective date of the appropriation.

3. If a notation on the records is made for an existing road or trail on federal lands but no government money has been expended, is there an effective 44 LD 513?

No. Notation of the public land records does not by itself constitute appropriation. The purpose of notation is to provide notice to the public that the improvement is the property of the United States and to facilitate that reservation in subsequent conveyances of the land. Public use of an area, by itself, does not establish a 44 LD 513 right-of-way.

4. A 44 LD 513 reserves trails or other improvements for the federal government. Does this insure unrestricted public use of the improvement?

No. A road or trail may be a federally owned facility on public lands, and not be a public highway, even though the public may be permitted to use it. In Alaska, there has been little intensive land management of federal lands and properly reserved 44 LD's have been generally open to public use. An exception to this is the White Alice system and other 44 LD's reserved for the military.

5. What rights accrue to the public through public use of a 44 LD road and what happens if it's closed to public use by an entryman or land owner?

No rights accrue to the public through use permitted (or allowed informally) by the government. The 44 LD only protects the government's rights and the public's use is incidental to that. The 44 LD does not become a public highway through permitted use by the general public. If a properly established 44 LD preceded an entry and public use of the 44 LD occurred before or after the entry, the entryman would not have the right to legally close off either the government's use or the public's use. If closure (physical blockage) does occur, the public and/or the government would each have to secure its rights through the court system, if necessary.

6. How do 44 LD's affect settlement claims?

In the case of entered lands, if a road was protected by a 44 LD or was a public highway at the time the land was entered, the entryman receives title to the land subject to the right-of-way. If the road was originally a federal improvement which was formally abandoned by the government prior to entry, the entryman would not take subject to the right-of-way. Similarly, if the road was formally abandoned after the initiation of the entry, the entryman would be entitled to take free and clear of the right-of-way. Finally, if the road was formally abandoned by an agency of the government prior to entry but appropriated through 44 LD procedures by BLM, prior to entry, the entryman would take subject to the appropriation of the right-of-way by BLM. The question of abandonment is to be resolved in each instance by determining whether the government has formally abandoned the right-of-way through both non-use and a formal action indicating the intent of the government to abandon.

If construction has not taken place prior to entry, 44 LD 513 requires some action upon the ground itself that the tract had been devoted to the public use - such as staking the area to be traversed, and therefore retained by the United States, accompanied by a setting aside of a sufficient part of the

appropriated money for construction. In other words, according to the instructions, construction must have been provided for prior to entry and will be immediately undertaken. It follows then, that the U.S. may not establish a 44 LD 513 right-of-way after land is properly entered for a settlement claim. It is important to bear in mind that the notation on the land records is not essential to the appropriation of the right-of-way.

7. Can the location of a 44 LD right-of-way be moved unilaterally; by either a landowner or the government on a settlement claim or private land? If so, how is it made a part of the public land records?

No, it cannot be moved. As the basic authority for 44 LD 513's has been replaced by the Federal Land Policy and Management Act of 1976, neither landowners nor the government may move a 44 LD 513. The process now available to consenting parties (landowners and the government) is a formal relinquishment of the 44 LD and acquisition of an easement by the government. The relinquishment procedure involves a formal statement by the appropriate government official that the intent of the United States is to relinquish all rights relative to the right-of-way. This document should also be accompanied by a memo to the Branch of Land Title and Records requesting a removal of the 44 LD from the public land records. The other

step in the process is acquisition of an easement by the government which would follow already established BLM procedure (BM 2130).

8. If an entryman agrees to build alternate access leading from a public highway to a 44 LD 513 trail, how do we note the records to assure a reservation in the subsequent patent to protect the alternate access?

If the entryman provides alternate access on his claimed land, the U.S. could relinquish the old route and accept the alternate route using the procedures outlined above. It should be noted, however, that this action should be preceded by a field report and environmental analysis report. In some cases, this type of action can be locally quite controversial and public involvement should be incorporated into the environmental analysis as provided for in our standard Bureau procedures.

9. Can a 44 LD be legally restricted or blocked by a land owner?

A proper 44 LD 513 may not be blocked by private individuals, it may be blocked or restricted only by the federal government. A blockage on federal land by a private individual would be a form of adverse possession against the government and many courts have held that you cannot acquire any rights by adverse possession against a sovereign.

1. - What is an RS 2477 road and how are they established?

A highway is a public road (trail) which anyone is free to use. In Alaska, some highways have been created by acceptance of a Congressional grant of right-of-way across vacant unreserved public lands. This grant is known as RS 2477, as derived from section 8 of the Act of July 26, 1866 (14 STAT 253, 43 USCA 932 (1964) RS 2477) which states:

"The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

Acceptance of the above Congressional grant has been through an act by the appropriate public authorities or it may have been accepted by public user for such a period of time and under such conditions so as to prove that the grant has been accepted. The primary condition is that the land was not reserved for public uses, i.e., vacant public land. (Note: The present land status in Alaska is such that there is no vacant public land as of March 28, 197⁴~~5~~, when PLO 5418 withdrew all remaining vacant lands.) RS 2477 has since been revoked by the Federal Land Policy and Management Act of October 21, 1976, PL 94-579.

RS 2477 is still of great interest as many public highways were established in Alaska in the past by both public user and by the appropriate public agencies. The establishment of a RS 2477 right-of-way was by construction and/or use on the ground. Appropriation by the U.S. under 44 LD instructions does not establish an RS 2477 right-of-way.

In the future, public or private roads on federal lands will be established by agencies or private persons by application for a right-of-way under the authority of the Federal Land Policy and Management Act of 1976.

2. How do RS 2477 rights-of-way affect settlement claims or private lands?

In much the same way as 44 LD's. That is, if the public's right was established prior to the entry, the entryman will take title subject to the RS 2477 right-of-way. If not established prior to entry, RS 2477 does not apply as the land is no longer vacant or unappropriated land. If an RS 2477 is properly established prior to entry, it is not necessary to insert into a conveyance document notice of the 2477 right-of-way.

IV. SECTION LINE EASEMENTS

1. Background

The legal origin for section line easements is again the Act of July 26, 1866 supra which made an offer of a free right-of-way over unreserved public land for highway purposes. This offer was accepted in Alaska on April 6, 1923, when the territorial legislature enacted Chapter 19 SLA. Beginning on that date, any land patented by the federal or territorial governments was subject to an easement four rods (66 feet) wide along the surveyed section lines.

The evolution of RS 2477 into a "section line easement," by definition required that the land be surveyed under the rectangular system. The centerline of the easement is the section line, therefore, lands surveyed by "special survey" or "mineral survey" are not affected by section line easements since such surveys are not a part of the rectangular system. A similar situation exists in the areas of large State selections where only a perimeter survey was run with monumentation every two miles. In these areas, there are no interior section lines surveyed, hence no section line easements.

2. Further History

The section line easement law remained in effect as described above until January 18, 1949. On this date, the territorial legislature adopted a compilation of Alaska's laws. In doing so, they also repealed any law not included in the compilation. The section line easement law was not included and thereby repealed. This repeal began a period of time, from January 18, 1949, to March 26, 1951, when no new section line easements were established either on federal or territorial lands or lands acquired therefrom.

On March 26, 1951, the territorial legislature passed an easement law (Chapter 123 SLA) which dedicated a section line easement 100 feet wide on lands owned by or acquired from the territory. Note that the 1951 law did not provide a section line easement on federal lands. The 1951 law was modified on March 21, 1953, so as to provide an easement 100 feet wide on surveyed territorial lands and 66 feet (four rods) wide on all other lands surveyed under the rectangular system. From March 21, 1953 on, the section line easement legally remained the same until its revocation on federal lands by PL 94-579, October 21, 1976. Its use on federal lands, however, has been continually reducing since 1953 as more and more land became appropriated for various uses (withdrawals, settlement claims,

etc.). On March 28, 197⁴/₅, all remaining vacant federal land was withdrawn by PLO 5418, thereby effectively removing section line easements from federal lands. It should be noted that while the section line easement did not apply to land patented by the federal government between January 18, 1949 and March 21, 1953, RS 2477 itself was still operative during that time on unreserved federal lands, for example, establishment of a road by a public user. The following summary may additionally clarify this history.

APPLICATION OF SECTION LINE EASEMENTS

Date	Federal Land or Land Patented By the U.S.	State or Territorial Land or Land Acquired From the State or Territory
July 26, 1866 to April 6, 1923	No section line easement although RS 2477 applied to all vacant federal land; width of easement determined by width of road constructed.	No. Alaska became a territory on August 24, 1912.
April 6, 1923 to January 18, 1949	Yes; 66 feet wide along section lines plus RS 2477 on remainder of vacant land.	Yes; 66 feet wide on surveyed land.
January 18, 1949 to March 26, 1951	No section line easement, although RS 2477 applied to all vacant federal land.	No.
March 26, 1951 to March 21, 1953	No section line easement, RS 2477 still applied.	Yes; 100 feet wide on surveyed land.
March 21, 1953 to March 28, 1975	Yes, 66 feet wide <u>if</u> land was <u>vacant</u> and surveyed.	Yes; 100 feet wide on surveyed land.
March 28, 197 ⁴ ₅ to Present	No. No federal land ⁴ was vacant after March 28, 197 ⁴ ₅ , and the law (RS 2477) was repealed on October 21, 1976.	Yes; 100 feet wide. Present codification is AS 19.10.010.

3. Questions About Section Line Easements

A. What are the legal rights under "section line" easements for:

1. State of Alaska
2. Private individuals
3. Federal government

Section line easements provide for public road development; they cannot be used for utilities, pipelines or private access. If a road was constructed along a section line easement in order to provide access to private property, the road is a public highway on the public lands.

B. When does the federal section line easement become effective?

The date of the approval of the plat of survey for a survey that has been performed on the ground.

On State land, where there has been no "on the ground" survey, the section line easement is effective as of the date the approval of the protraction which is published in the Federal Register. The subsequent "on the ground" survey then would identify its exact location; (see page 7, A.G. Opinion No. 7).

- C. Can the State build a road on a section line easement properly established before PLO 5418 (March 28, 1974). What restrictions may be placed on such a road by the federal government?

Yes, State has the right to build a road on a section line easement established prior to reservation of the lands. A private person may not, however. The State's right is derived from their acceptance of the Congressional grant by passage of Chapter 19 SLA in 1923. A private person that did not accept the grant prior to PLO 5418 may not now do so as RS 2477 was extinguished by P.L. 94-579, on October 21, 1976.

The federal government may not place any restrictions on a road built by the State on a properly established section line easement.

- D. Can a private individual build a road on a "section line easement" across federal land to reach his entry or patented land without a right-of-way grant from BLM.

No. This easement no longer applies to federal land. BLM may now issue rights-of-way to private persons, but under the authority of PL 94-579 (Federal Land Policy and Management Act of 1976).

- E. In view of the present federal laws, does the section line easement still apply anywhere in Alaska?

Yes, in two instances. First, easements established in the past continue to be valid. Secondly, it still applies to surveyed land which is owned by or acquired from the State. This is still in effect due to a law passed by the territorial legislature in 1951 (Chapter 123 SLA, March 26, 1951, present codification is AS 19.10.010).

- F. Can a public right-of-way such as RS 2477 be legally blocked so the public rights are restricted or eliminated?

A properly established RS 2477 cannot be legally restricted (blocked) unless abandoned or vacated in accordance with state law. The public's right to use may not be restricted or lost by adverse possession. Additionally, adverse possession does not gain any rights against the public, the federal government, the state government or its municipal subdivisions.

- G. If a properly established RS 2477 right-of-way is found to be blocked what is the public users responsibility or remedy?

Settlement of this situation is a local matter, that is to say, defense of the public's right is not the responsibility of the federal government. It is a matter of local and state courts involving the public user(s) and the person(s) who are blocking the right-of-way. Therefore, it is the responsibility of the user to notify the blocker that the right-of-way is considered to be public and that they protest the blockage. Then it becomes a matter of proving the history of the public's right to the road, trail, etc.

H. What is a prescriptive easement or right-of-way?

This is a right-of-way gained through continuous adverse possession or use for a period of ten years. As previously stated, adverse possession is not effective against the public, the federal government, the state government or its municipal subdivisions, therefore, it only applies to private lands.

Enclosures:

Regional Solicitor's Memo

Attorney General's Letter