

# MEMORANDUM

## State of Alaska Department of Transportation & Public Facilities

TO: Lynn J. Harnisch, P.E.  
Regional Director  
Northern Region

DATE: July 24, 1987

FILE NO:

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FROM: John D. Martin, P.E.  
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SUBJECT: Alaska Federal Agency  
RS2477 Policy Review

This is in review of the draft Alaska Federal Agency RS2477 Policy paper dated July 16, 1987. While Commissioner Hickey's July 23, 1987 transmittal note asks for emphasis on clarity on points of Federal/State Agreement, we should stay on record regarding points of Federal/State disagreement. Points of disagreement on which we should stay on record include:

- 1) The validity of section line easements. This draft policy says there is no such thing as section line easements on Federal land. After 64 years of determining section line easements to be valid under 1923 territorial legislation, it seems unreasonable for the Federal government to completely reverse itself. Not only is this inconsistent, it would create extensive confusion and would be devastating to property owners who rely on section line easements for legal access.
- 2) The width of RS2477 rights-of-way. The State, after recognizing the very real need for wider rights-of-way than ditch to ditch, "accepted" 100' wide rights-of-way for roads on unreserved land. During recent years the Federal RS2477 philosophy has changed from that of "such interpretation is up to the States" to "no more than ditch to ditch". We should sit firm on 100'.
- 3) Who regulates use of an RS2477 right-of-way? Until the last few years, Federal agencies left regulation on this up to the states also. Although the Federal philosophy has changed, we should stand firm that this is a State prerogative. These rights-of-way were simply granted (to the states) for highway purposes.
- 4) Who can determine the validity of an RS2477 right-of-way? This policy paper states that only a Federal court can determine validity. We should argue that Federal agencies can also make validity determinations and that a court decision is only necessary when there is reasonable disagreement. It is impractical to expect court action on each RS2477 case.

The rights offered by RS2477 were very general. The Federal agencies are trying to impose very specific restrictions on them. It is interesting to note that these rights were accepted during a time when the interpretation was general. The more recent Federal interpretation is actually trying to go back in time to impose more restrictive interpretation. In some cases (in section line easements), the current Federal interpretation is in direct conflict with previous Federal interpretation. In land law related matters, such regression is extremely disruptive.

NP:ap