

MEMORANDUM

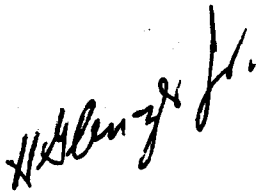
State of Alaska Department of Transportation & Public Facilities

TO: Mark Hickey
Special Assistant to the Commissioner
Juneau Headquarters

DATE: July 8, 1986
FILE NO:

TELEPHONE NO: 474-2427

FROM: H. Glenzer, Jr.
Deputy Commissioner
Northern Region



SUBJECT: RS2477 Federal
Policy Development

We have briefly reviewed the first draft of an Alaska Federal Agency RS2477 Policy which you sent on June 25, 1986, and have the following observations and comments:

The draft policy does little to recognize State responsibilities, rights and needs under RS2477. State actions, legislation, assertions, etc., are largely ignored in this version of a draft policy. The policy seems to be a "back door" attempt to render State access comments on Conservation System Unit Management Plans ineffective.

The stated policies are generally based on very restrictive interpretations of RS2477. Little or nothing is done to accommodate State interests in RS2477 rights of way (i.e., 100 foot wide rights of way, section line easements).

The Federal agencies seem to be taking advantage of the difficulty the State has had in developing an RS2477 policy that is generally acceptable to all affected parties. The Federal conclusion seems to be that since everyone cannot agree on a policy, the Federal agencies will develop one that best serves their own views and purposes. While this may be very convenient for the Federal point of view, it is not a proper method of policy development, and it is certainly not in the best interest of the State of Alaska. If this draft policy is allowed to go forward unchallenged, Alaska's ability to manage RS2477 routes will be severely constrained.

In order for the State to protect its rights under RS2477, and more importantly to protect the RS2477 option for access to land and resources, the Federal agencies involved in the development of this draft policy should be put on notice that no such policy should be developed without extensive public and State involvement. Implementation of such a policy would be a major action with a significant effect on the State of Alaska, on numerous property owners, and on people who rely on RS2477 access rights.

I cannot emphasize enough that the Northern Region views this draft policy, and the trend toward virtual unilateral policy development on RS2477 by Federal agencies with the strongest alarm. Significant, decisive, and timely action by our Department on this is required. We would be happy to help with anything. Please keep us posted.

cc: John D. Martin, Chief, Planning & Research, Northern Region
~~William~~ William McMullen, Director, Northern Region D&C

FIRST DRAFT

ALASKA FEDERAL AGENCY RS 2477 POLICY

Recommendation by
Revised Statute 2477 (RS 2477) FEDERAL TASK GROUP

Since the passage of the Alaska National Interest Lands Conservation Act (ANILCA), RS 2477 rights-of-way have become a major issue in the State of Alaska. These rights-of-way may provide legal access for the general public across federally managed lands. A uniform understanding of the rights granted by this law, as it pertains to federally managed lands, is the goal of this policy paper. This paper is intended to assist both the Federal land managers and public with access related questions.

RS 2477 is only one of many authorities which may be used to provide access across Federal lands. Some of these authorities are available to all the agencies, i.e. Title XI, ANILCA, while others apply to only one or two agencies, i.e. the Bureau of Land Management (BLM) and Forest Service use of Title V, Federal Land Policy and Management Act. All agencies also have permitting authorities relating to access.

The RS 2477 grant is unique among these access authorities. It is a congressional grant which does not require any action on the part of a Federal agency. While the grant is "offered" by Congress, a right cannot come into existence until there is an "acceptance" of the offer and thereby a contract is completed. The congressional offer is defined by Federal law and disputes relating to the offer are resolved in Federal courts. The acceptance, by a State, instrumentality of the State or citizen of the State, is defined by State law and disputes are resolved in State courts. These unique features of RS 2477 have led to varying interpretations of both the grant and acceptance and the relationship of the Federal land manager to RS 2477 right-of-way claims. The following policy statements are intended to eliminate some key areas of confusion.

Revised Statute 2477

The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted. (Sec. 8 of the Act of July 26, 1866; R.S. 2477, 43 U.S.C. 932; repealed October 31, 1976, 90 Stat. 2793.)

An RS 2477 right could only have been created on unreserved public lands; withdrawn or reserved lands were not available. For the purpose of general public inquiries and public meetings, December 14, 1968, the date Public Land Order 4582 was posted to the Miscellaneous Documents Index of the BLM Master Title Plats in Fairbanks District, will be used as the date all lands became reserved in Alaska. Generally, no RS 2477 grants could be accepted after this date. When researching an RS 2477 right-of-way claim, the BLM land records must be examined to determine the exact date(s) public lands became reserved.

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recognized?
determination
valid?
what?
Hamerly vs
Denton
A determination
of validity
why can't it be
A basis for
administrative
determination
of validity?

2. A potential RS 2477 right will not be acknowledged by a Federal agency until the requirement cited below under Hamerly v. Denton (Item 4) has been satisfied: (a) the party claiming the public highway has proven the highway was located over unreserved public lands and (b) the character of use was such as to constitute acceptance by the public of the statutory grant. Information supporting a potential RS 2477 right may be submitted to Federal agencies and should include, as a minimum, a 1:63360 scale USGS map and a narrative, with supporting documentation, stating the acceptance date of the grant and the use history of the right-of-way prior to the lands becoming reserved.
3. Federal agencies may administratively recognize RS 2477 claims as a management technique. This administrative action shall not be interpreted as a determination as to the validity of the claim.
4. Federal agencies will use the following definition of "highway" for the purposes of RS 2477 recognition and public discussions.

A highway is a travel or transportation route common to that locale at the time the grant was accepted, it must be freely open to everyone, and must satisfy the requirements as expressed in Hamerly v. Denton.

Requirements of Hamerly v. Denton (359 P.2d at 125)

Before a highway may be created, there must be either positive act on the part of appropriate public authorities of state clearly manifesting intention to accept grant, or there must be public user for such period of time and under such conditions as to prove grant has been accepted.

Party claiming that road became public highway under federal statute granting highway right of ways over public lands by virtue of public use had burden of proving that highway was located over public lands and that character of use was such as to constitute acceptance by public of the statutory grant.

Desultory use of dead-end, road or trail running into wild, unenclosed and uncultivated country, does not create a public highway.

Construction or sufficient use must have taken place for an RS 2477 grant to have been accepted. The passage of a Territorial or State law does not equal construction. Therefore, a section line easement, that has not been constructed or used, does not exist on Federal lands.

To satisfy the requirement of construction, the construction must be sufficient to allow passage of persons, animals or vehicles for which the highway was established.

The nature of the RS 2477 grant is the same as other Federal highway right-of-way grants:

The grant is for the right of passage over the land: it is not fee title.

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*section
state vs Fed lines*

- b. The grant is for vehicular, animal, or pedestrian travel, not for pipelines, powerlines, telephone or other communication facilities.
 - c. The granted right-of-way is for a specific width, it is not a transportation corridor.
9. The width of an RS 2477 right-of-way is that width necessary to accommodate the uses common to that right-of-way, variously defined as the area actually used, ditch to ditch, or the constructed area. The Federal Government's position is that the State's April 6, 1963 law does not apply to Federal lands, because a State law cannot define the Federal offer.
9. The legal uses of an RS 2477 right-of-way are defined by the acceptance of the grant, i.e. an acceptance for the purpose of a winter trail results in a highway where only winter use is legal. A lesser right of use is encompassed by a larger right, i.e. pedestrian or light all-terrain vehicles can use a trail accepted by use of heavy mining equipment. However, an attempted enlargement of the accepted right after the lands became reserved is not legal, i.e. where acceptance occurred through use as a foot trail, use now by all-terrain vehicles would not be legal.
10. Abandonment of a valid RS 2477 right-of-way requires formal vacation procedures by the State.
11. There is no "sunset" provision for RS 2477 claims.
12. Clearing potential RS 2477 claims from a management ^{unit} ~~unit~~ through use of a "quiet title" action will not normally be pursued.
land management
13. All Federal Agencies have legal authority to manage RS 2477 rights-of-way. Implementation of this authority varies among the agencies. The Forest Service, Fish and Wildlife Service and National Park Service have regulatory authority over the use of the right-of-way. The Bureau of Land Management only has regulatory authority over the underlying and adjacent lands and impacts to these interests caused by unauthorized use of the right-of-way.
14. Any action a Federal agency may take to abate misuse of an RS 2477 right-of-way will be taken against the user.
5. The placement of RS 2477 information in land use plans is at the discretion of each agency. Generally, RS 2477 information will be treated as inventory data and will not be included in the final plan.
6. Only valid or administratively recognized RS 2477 claims which cross BLM managed lands will be placed on the BLM Master Title Plats. Valid rights or administratively recognized claims will not be shown crossing another agency's or private lands. This is consistent with existing policy for less than fee title interests. Where an RS 2477 claim crosses BLM land and other land management/ownership is also impacted by the claim, BLM shall coordinate with these other interests prior to placing the claim on the Master Title Plats.
17. The State of Alaska Roads and Trails Inventory of 1974 does not satisfy the requirements listed under Item 2 above.

SECTION LINE EASEMENT GUIDE

	<p>Land that was federal unreserved land at any time during the periods indicated by the width has a section line easement along surveyed section lines.</p>	<p>Land that was territorial or state land at any time during the periods indicated by the width has a section line easement along surveyed section lines.</p>
<p>July 26, 1866 (43 USC 932 RS 2477; offer made by federal government) April 5, 1923</p>		
<p>April 6, 1923 (Ch. SLA 1923; offer accepted by territory) January 17, 1949</p>	<p align="center">66' wide</p>	<p align="center">66' wide</p>
<p>January 18, 1949 (ACLA 1949 fails to include territory's acceptance) March 25, 1951</p>		
<p>March 26, 1951 (Ch. 123 SLA 1951 dedicates section line easement on territorial land) March 20, 1953</p>		<p align="center">100' wide</p>
<p>March 21, 1953 (amends Ch. 123 SLA 1951 to include acceptance of offer on federal land) March 27, 1975</p>	<p align="center">66' wide</p>	
<p>March 28, 1975 (PLO 5418 reserves all remaining vacant federal land)</p>		
<p>October 21, 1976 (RS 2477 repealed) Present</p>		