

State, Interior huddle over right-of-way use

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WASHINGTON—State and federal officials are negotiating here over the interpretation of an obscure public land law that has implications for many Alaskans.

At issue is the application of a federal statute known as RS 2477, which deals with the right of way to use public lands. The law was enacted in 1866 and states, "The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

The law was repealed in 1976 when Congress passed a new federal land management act. The Interior Department now is negotiating with the state of Alaska on new procedures for granting rights of way across public lands.

The situation is important since Alaska has more public lands, including parks, wildlife refuges and wilderness areas than any other state.

In a recent letter to Interior Department officials, John Katz, head of Gov. Steve Cowper's office here, outlined the different views of the state and the federal government.

"We are not writing on a blank slate here," said Katz. "There are 120 years of federal and state case law, policy and procedure upon which we should all rely."

The state of Alaska believes that a right of way can be created by a pattern of public use or by enactment of the legislature.

"Many RS 2477 rights of way support roads and trails which are heavily used by members of the public in urban and rural areas," Katz said. "Moreover, the existence of such rights of way directly affects the use and management of adjoining private and federal lands. Nowhere are these land management concerns more acute

than in national parks, wildlife refuges and other federal conservation system units."

The Interior Department regional agency directors in Alaska have rejected the state's analysis, claiming that actual construction of a road is necessary in order to accept an RS 2477 right of way.

In addition, the state and federal officials are at odds over the width of the right of way that is granted across public lands.

The Interior Department has recommended that the width of all Alaska rights of way be limited to the area actually used for a road. Katz said this interpretation "overlooks the well-settled principle" that acceptance of a right of way for public use should include as much width as necessary to accomplish the access functions granted under federal law.

In addition, the state maintains that power lines and other utility uses that do not interfere with roadway travel are proper subordinate uses of a right of way. A state law authorizes the use of road rights of way in Alaska for utilities, and many electrical-transmission lines have been constructed within RS 2477 easements.

However, Interior Department officials in Alaska claim the use of a RS 2477 right-of-way should be limited to travel purposes, and cannot be used for utilities.

Katz said, "For many years, the federal government has acquiesced in the construction of ancillary functions with RS 2477 easements. To reverse this policy now would wreak havoc with land title in Alaska and could generate demanding compensation for alleged trespass."

Katz said the ongoing negotiations with the Interior Department have strong implications for other Western states with large amounts of federal land.