

CHRONOLOGY OF R.S. 2477 ACTIONS AFFECTING ALASKA

1866, July 26:

The Act of July 26, 1866 is passed with a section stating:

The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted (43 U.S.C. 932; 14 Stat 253). (Enclosure 1)

Now known as Revised Statute 2477 (R.S. 2477)

1884, May 17:

Organic Act of May 17, 1884 (23 Stat. 24) extends R.S. 2477 to Alaska (source: Solicitor's Opinion).

1923, April 6:

Territorial Legislature passes law (Ch. 19, SLA 1923) accepting R.S. 2477 grant for section line easements - 66 feet wide (33 feet each side of centerline). Courts have held section line must be surveyed for section line easement to come into being. (Unresolved legal question: Did this acceptance extend to non-section line roads and trails?)

1949, January 18:

Territorial laws codified; section line easement law left out. This created a gap when new section line easements could not be established.

1951, March 26:

Territorial legislature passes law (Ch. 123, SLA 1951) accepting R.S. 2477 grant for section line easements on State lands - 100 foot width (50 feet each side of centerline).

1953, March 21:

Territorial legislature passes law (Ch. 35, SLA 1953) accepting R.S. 2477 grant for section line easements across Federal lands - 66 feet wide (33 feet each side of centerline).

State Legislature enacted Sec.1, Ch.35, SLA 1963 which declared all officially proposed and existing highways to be 100 feet wide (AS 19.10.015).

1968, December 14:

All Public Lands in the State of Alaska are segregated (reserved) by the posting of the withdrawal application for Public Land Order 4582 (source: memorandum from BLM State Director dated April 9, 1985). No new R.S. 2477 rights could come into existence after this date; construction or use had to occur prior to December 14, 1968. Although the R.S. 2477 law was still an available authority for the construction of highways, there was no remaining unreserved lands in Alaska. (Enclosures 2 and 3)

1974, April 8:

Commissioner B.A. Campbell, Alaska Department of Highways sent a copy of the Existing Trail System for the State of Alaska to the State and Federal Land Use Planning Commission of Alaska and BLM with the following statement: "The State of Alaska maintains ownership of these trails." (Enclosure 4)

1976, October 21:

Federal Land Policy and Management Act (FLPMA) passes. R.S. 2477 repealed. No new highways could be constructed after this date using the R.S. 2477 authority.

July 1:

45 Federal Register 44526 established the first procedures for the filing of a map showing the location of R.S. 2477 highways with BLM to facilitate management of the public lands (43 CFR 2802.5 (b)). (Enclosure 5)

September 10:

BLM Manual 2801 released with guidance concerning implementation of 43 CFR 2802.5 (b). (Enclosure 6)

1984, April 12:

At the yearly Fairbanks District Office BLM/Alaska Department of Transportation Northern Region managers meeting, it was decided that the time had come to resolve problems related to R.S. 2477 rights-of-way. A committee was established to develop a Memorandum of Understanding (MOU) for procedures to accept and place R.S. 2477 assertions on State and BLM land status plats. A purpose of the MOU is to satisfy the requirement of the BLM Manual (2801.2481d) for a State procedure to confirm R.S. 2477s.

September 28:

Memorandum of Understanding signed by BLM, Alaska Department of Natural Resources, and Alaska Department of Transportation establishing procedures for the assertion of R.S. 2477 rights-of-way. (Enclosure 7)

December 26:

Letter by Mim Dixon, Alaska Department of Transportation and Jerry Brossia, Alaska Department of Natural Resources, reiterating the State's intention to protect State rights-of-way in their 1974 transmittal to BLM. (Enclosure 8)

August 12:

Memorandum from BLM State Office explaining BLM's position on the State's 1974 assertion. (Enclosure 9)

Note: Fourteen assertions have been reviewed by the R.S. 2477 Coordination Committee; four of these cross BLM-managed lands.

Prepared by: Dwight J. Hempel
Fairbanks District Office
Bureau of Land Management
August 30, 1985

RIGHTS OF WAY

Cross references: See subtitles "Railroads and Rights of Way," p. 47, and "Trade and Manufacturing Sites," p. 67, under "Alaska"; "Forest Reserves," p. 137; subtitle "Stock-Raising Homesteads," under "Homesteads," p. 177; subtitles "Rights of Way Over Indian Lands," under "Indian Lands," p. 274; Secs. 2330 and 2340, R. S. p. 317, and subtitle "Leasing of Mineral Lands," under "Mineral Lands," pp. 341, 353, 359; "National Parks," p. 370; subtitles "Railroad Rights of Way," pp. 477, 482, and "Wagon Road Grants," p. 483, under "Railroad Grants"; "Fact Finders' Act," under "Reclamation," p. 512, "Reservoir Sites," p. 615; "Timber and Stone Lands," p. 707; "Federal Water Power Act," under "Water Power," p. 754.

NAVIGABLE RIVERS THROUGH PUBLIC LANDS

SEC. 2476, R. S. All navigable rivers, within the territory occupied by the public lands, shall remain and be deemed public highways; and, in all cases where the opposite banks of any stream not navigable belong to different persons, the stream and the bed thereof shall become common to both. (U. S. C., title 43, sec. 931.)

Navigable rivers within public lands to be public highways.

May 18, 1796, 1 S., 468; Mar. 3, 1803, 2 S., 236.

HIGHWAYS OVER PUBLIC LANDS

Cross references: See "Alaska," p. 67; subtitle "Rights of Way," under "Indian Lands," p. 279; subtitles "Railroad Rights of Way" and "Wagon Road Grants," under "Railroad Grants," pp. 477, 482, 483.

SEC. 2477, R. S. The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted. (U. S. C., title 43, sec. 932.)

Right of way for highways over public lands.

July 28, 1866, 14 S., 253.

An Act To amend the Act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916, as amended and supplemented, and for other purposes

SEC. 17. That if the Secretary of Agriculture determines that any part of the public lands or reservations of the United States is reasonably necessary for the right of way of any highway or forest road or as a source of materials for the construction or maintenance of any such highway or forest road adjacent to such lands or reservations, the Secretary of Agriculture shall file with the Secretary of the department supervising the administration of such land or reservation a map showing the portion of such lands or reservations which it is desired to appropriate.

Use of public lands for rights of way or materials.

Application for.

If within a period of four months after such filing the said Secretary shall not have certified to the Secretary of Agriculture that the proposed appropriation of such

Transfer to State authorities if not objected to.

Federal Register Data

Published: 1/23/69 Vol.: 34
No.: 15 Page: 1025

PLO No.: 4582
Date PLO signed: 1/17/69

F 11527, filed 12-12-68.

[Public Land Order: 4582]

ALASKA

Withdrawal of Unreserved Lands

By virtue of the authority vested in the President by section 1 of the act of June 25, 1910 (36 Stat. 247, 43 U.S.C. 141), as amended, and pursuant to Executive Order No. 10355 of May 28, 1952 (17 F.R. 4631), it is ordered as follows:

1. Subject to valid existing rights, and subject to the conditions hereinafter set forth, all public lands in Alaska which are unreserved or which would otherwise become unreserved prior to the expiration of this order, are hereby withdrawn from all forms of appropriation and disposition under the public land laws (except locations for metalliferous minerals), including selection by the State of Alaska pursuant to the Alaska Statehood Act (72 Stat. 239), and from leasing under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181, et seq.), as amended, and reserved under the jurisdiction of the Secretary of the Interior for the determination and protection of the rights of the native Aleuts, Eskimos, and Indians of Alaska. The withdrawal and reservation created by this order shall expire at 12 (midnight), A.S.T., December 31, 1970.

2. Unless otherwise required by law, all applications for leases, licenses, permits, or land title transfers which were pending before the Department of the Interior on the effective date of this order, will be given the same status and consideration beginning at 12 (noon) A.S.T., on April 2, 1971, as though there had been no intervening period, unless previously recalled by the applicant.

3. From January 1, 1971, until 12 (noon), A.S.T., on April 2, 1971, the State

of Alaska shall, subject to the provisions of paragraph 2 of this order, have a preferred right of selection as provided by section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 341). Any public lands not selected by the State and not otherwise reserved shall at 12 (noon) A.S.T., on April 2, 1971, become subject to appropriation under the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law.

4. Applications filed by the State of Alaska before January 4, 1969, to select unreserved public lands under the Statehood Act, which at the time of such filings were embraced in leases, licenses, permits, or contracts issued pursuant to the Mineral Leasing Act of 1920 supra, or the Alaska Coal Leasing Act of 1914 (37 Stat. 741, as amended, 49 U.S.C. 432), and applications filed by the State of Alaska before December 13, 1968, to select other unreserved lands under the Statehood Act, shall be processed in accordance with the policies and procedures of this Department designed to protect the rights of the native Aleuts, Eskimos, and Indians of Alaska, which were in effect on the date of this order.

5. This order may be modified or amended by the Secretary of the Interior or his delegate upon the filing of an application which demonstrates that such modification or amendment is required for the construction of public or economic facilities in the public interest. Applications for such modification or amendment should be filed in the land office of the Bureau of Land Management, Anchorage, Alaska.

STEWART L. UDALL,
Secretary of the Interior.

JANUARY 17, 1969.

[F.R. Doc. C9-673; Filed, Jan. 22, 1969; 6:50 a.m.]

Amendments

- 4582 - permit R/W's. stat 3000 under 3.7 of FPLA Act.*
- 4588 - permit R/W's for power lines to serve Nalae Vill.*
- 4669 - permit Apt. lots + Apt. comm.*
- 4674 - permit for 2000 Hwyway from Livingston - Yukon Riv.*
- 4682 - permit SS at Cold Bay*
- 4685 - Disposal of Timber*
- 4686 - permit Oil Pipeline*
- 4737 - permit well for 2d deep. at Togiak*
- 4748 - permit R/W grant to Naktomaska River*
- 4754 - withdrawal under TIS from 4582*
- 4755 - CofA*
- 4756 - CofA*
- 4757 - CofA*
- 4758 - CofA*
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- 4799 - CofA*
- 4800 - CofA*

STEWART L. UDALL

United States Department of the Interior (932)



BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

APR 12 10 21 AM '85

DISTRICT OFFICE
FAIRBANKS, ALASKA

APR 9 1985

Memorandum

To:

From: State Director, Alaska

Subject: Effect of Withdrawals on Existing and New R.S. 2477 Claims

This is in response to your memorandum of March 7, 1985, requesting guidance regarding the effect of certain withdrawals on R.S. 2477 claims.

Question No. 1 was: Did either ANCSA or ANILCA void prior existing R.S. 2477 rights on lands withdrawn under these acts or throughout Alaska?

Answer: No, any "valid" rights established prior to these withdrawals are protected.

Discussion: The withdrawals created by sections 11(a) and 16(a) of ANCSA were made subject to valid existing rights. The withdrawals created for parks, refuges, forests, etc. by ANILCA were also made subject to valid existing rights; therefore, any properly established (i.e., valid) R.S. 2477 right which predated ANCSA and ANILCA remains in force and effect. Validity of such rights can, however, be determined only in a court of competent jurisdiction and is a matter between the landowner or manager and the entity asserting the right.

Question No. 2(a): Did PLO 4582, Withdrawal of Unreserved Lands, as amended create a bar to the acceptance of the R.S. 2477 grant?

Answer: Yes, it did.

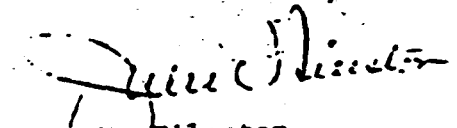
Discussion: PLO 4582 was, in fact, a withdrawal of all public lands in Alaska from all forms of appropriation and disposal and was, therefore, a bar to the acceptance or establishment of an R.S. 2477 claim so long as the withdrawal remained in effect. PLO 4582 had to be specifically modified by PLO 4676 to allow the State to appropriate and construct the Hickle Highway from Livengood to the Yukon River.

Question No. 2(b): If "a" is yes, what is the effective date?

Answer: December 14, 1968, the date of posting of the application for withdrawal to our records

Enclos.

Discussion: The application for withdrawal segregated the land pending completion and publication of the public land order. Therefore, in this case we use December 14, 1968 as the date of segregation since that is the date the application was noted on BLM's records.



Jules V. Fileston
Deputy State Director for
Lands and Renewable Resources

Enclosure:

Copy of Incoming Memorandum

7-11-1974

TO: Department of Interior
Bureau of Land Management

DATE: April 8, 1974

FILE NO: 00-2528

TELEPHONE NO: 364-2121 Ext. 111

SUBJECT: Existing Trail System

FROM: B. A. Campbell
Commissioner of Highways

The Alaska Department of Highways has researched and compiled a detailed Existing Trail System for the State of Alaska. We are transmitting one set of blue-line prints and one bound set of IEM listings for your records.

The State of Alaska maintains ownership of these trails. The information on these trails is available to the public through the Alaska Department of Highways, and upon request will furnish at cost, approximately \$120.00, a combined set of the plans with the IEM run.

Attachments: as stated.

EAC/JQA/jal

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NOV 14 1984
3:07

Enclosure

been adequately complied with, the authorized officer may reject the application or notify the applicant of the continuing deficiency and afford the applicant an opportunity to file a correction.

(d) Prior to issuing a right-of-way grant or temporary use permit, the authorized officer shall:

(1) Complete an environmental analysis in accordance with the National Environmental Policy Act of 1969;

(2) Determine compliance of the applicant's proposed plans with applicable Federal and State laws;

(3) Consult with all other Federal, State, and local agencies having an interest, as appropriate; and

(4) Take any other action necessary to fully evaluate and make a decision to approve or deny the application and prescribe suitable terms and conditions for the grant or permit.

(e) The authorized officer may hold public meetings on an application for a right-of-way grant or temporary use permit if he determines that such meetings are appropriate and that sufficient public interest exists to warrant the time and expense of such meetings. Notice of public meetings shall be published in the FEDERAL REGISTER or in local newspapers or in both.

(f) A right-of-way grant or temporary use permit need not conform to the applicant's proposal, but may contain such modifications, terms, stipulations or conditions, including changes in route or site location on public lands, as the authorized officer determines to be appropriate.

(g) No right-of-way grant or temporary use permit shall be in effect until the applicant has accepted, in writing, the terms and conditions of the grant or permit. Written acceptance shall constitute an agreement between the applicant and the United States that, in consideration of the right to use public lands, the applicant shall comply with all terms and conditions contained in the authorization and the provisions of applicable laws and regulations.

(h) The authorized officer may include in his/her decision to issue a grant a provision that shall be included in a right-of-way grant requiring

that no construction on or use of the right-of-way shall occur until a detailed construction, operation, rehabilitation and environmental protection plan has been submitted to and approved by the authorized officer. This requirement may be imposed for all or any part of the right-of-way.

[45 FR 44526, July 1, 1980, as amended at 47 FR 12570, Mar. 23, 1982]

§ 2802.5 Special application procedures.

(a) An applicant filing for a right-of-way within 4 years from the effective date of this subpart for an unauthorized right-of-way that existed on public land prior to October 21, 1976, is not:

(1) Required to reimburse the United States for the processing, monitoring or other costs provided for in § 2803.1-1 of this title.

(2) Required to pay rental fees for the period of unauthorized land use.

(b) In order to facilitate management of the public lands, any person or State or local government which has constructed public highways under the authority of R.S. 2477 (43 U.S.C. 932, repealed October 21, 1976) may file a map showing the location of such public highways with the authorized officer. Maps filed under this paragraph shall be in sufficient detail to show the location of the R.S. 2477 highway(s) on public lands in relation to State or county highway(s) or road(s) in the vicinity. The submission of such maps showing the location of R.S. 2477 highway(s) on public lands shall not be conclusive evidence as to their existence. Similarly, a failure to show the location of R.S. 2477 highway(s) on any map shall not preclude a later finding as to their existence.

[45 FR 44526, July 1, 1980, as amended at 47 FR 12570, Mar. 23, 1982; 47 FR 38806, Sept. 2, 1982]

B. Revised Statute 2477. The Act of July 26, 1866, R.S. 2477 (43 U.S.C. 932) provided:

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

This statute, which was repealed by FLPMA, has been interpreted as a right-of-way grant for highways over the public land without any limitation as to the manner of the establishment. The grant becomes fixed when a public highway is definitely established in one of the ways authorized by the laws of the State where the land is located. The Act did not specify the extent of the grant, the width of the right-of-way, or the nature of the rights conveyed. To facilitate proper management of the public land, the Bureau has to have a sound transportation plan. Therefore, it is necessary to identify all public roads.

1. Criteria for identification of R.S. 2477 Public Highways, include four elements:

a. In order for a valid right-of-way to come into existence, there must have been the actual building (construction) of a highway. Mere use, planning, or surveying, does not equal construction. However, construction may not have occurred all at once. Road maintenance often equals improvement, or even construction. Increments of maintenance over several years may equal construction. When public funds have been spent on the road it may be a public road. When the history of a road is unknown or questionable, its mere existence in a condition adequate for public use may be evidence that construction has taken place.

b. A highway is freely open to everyone. Roads that have had access restricted to the public by locked gates or other means may not be public highways.

c. The construction of a public highway on unreserved public land must have occurred prior to October 21, 1976.

d. A State has to have a procedure to confirm the R.S. 2477 public highway right-of-way grant.

2801 - MANAGEMENT

2. The regulations (43 CFR 2802.5) have set a goal of identifying all the R.S. 2477 highways. The Bureau should work with each State, county, and municipality to identify all of the existing public highways. The equivalent of an application for this type of public highway is any map that clearly shows the location of the highway on public land. Additional information such as right-of-way width would also be desirable. Compare the map with criteria .24B1a through c. If the roads identified on the map submitted by State agree with the criteria assume that the roads are bona fide R.S. 2477 highways. If differences are found between the map and criteria, further research with the local government may be necessary. A letter of acknowledgement with a map or listing to the appropriate local government that identifies the public highways is sufficient. There is no grant form.

a. Assign a serial number and set up a case file. Minimize the number of serial numbers and files by consolidating roads under each governing body. However, if the State Office already has an existing serialization system with individual numbers, it may be continued.

b. Note the Master Title Plat. Authority to be cited on the serial register page is R.S. 2477 (43 U.S.C. 932).

3. Roads existing on public land, other than public highways are generally Bureau-administered roads. State, local governments, and others may file an application for a right-of-way grant for roads that do not meet the criteria listed in .24B1. R.S. 2477 did not specify the terms and conditions of the rights conveyed. In some instances, it is necessary to know the terms and conditions in order to manage the adjoining public land. As a general rule, terms and conditions can be determined by examining the State laws or practices for similar public highways.

a. Terms - perpetual

b. Right-of-way width - As specified by State law or commonly used on similar public highways.

c. Extent - public use as a roadway. This would not include material sites, stockpile sites, or other ancillary facilities.

4. Other rights-of-way use within a R.S. 2477 right-of-way after December 9, 1974, must be authorized by a separate right-of-way grant. Separate right-of-way requirements prior to December 9, 1974, were waived by the Bureau. However, when these pre-1974 rights-of-way require a new location or ownership change, they should be updated with a new right-of-way grant.

MEMORANDUM OF UNDERSTANDING
 BETWEEN ALASKA DEPARTMENT OF NATURAL RESOURCES AND
 ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
 AND
 BUREAU OF LAND MANAGEMENT

PURPOSE

1. The purpose of this agreement is to establish the procedures for the assertion of RS 2477 rights-of-way by the Alaska Department of Natural Resources (DNR) and the Alaska Department of Transportation and Public Facilities (DOT&PF) to the Bureau of Land Management (BLM). Federal, state, and local officials need to know locations of RS 2477 public right-of-way assertions in order to assist such officials in their land and resource management decisions. The public needs to know the location of RS 2477 public right of way assertions to avoid unauthorized uses on private lands. This Memorandum of Understanding (MOU) will establish procedures that will enable RS 2477 rights-of-way assertions to be placed on land status plats.

BACKGROUND

2. RS 2477, formally codified as 43 U.S.C 932 (repealed by P.L. 94-579, Federal Land Policy and Management Act of October 21, 1976 , provides:

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

3. By regulation found in 43 C.F.R. 2802.5 (b), the Bureau of Land Management has provided:

In order to facilitate management of the public lands, any person or state or local government which has constructed public highways under the authority of RS 2477 (43 U.S.C. 932, repealed October 21, 1976) may file a map showing the location of such public highways with the authorized officer.

4. In Hamerly v. Denton, 359 P. 2d 121, 123 (Alaska 1961), the Alaska Supreme Court stated that the general rule regarding acceptance of the RS 2477 federal grant:

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

5. The United States Department of the Interior, Office of the Solicitor, stated in a memorandum dated July 7, 1983:

"[(T)he Department of the] Interior has long recognized that State law controls what constitutes a (R.S. 2477) highway within each state;" and

6. Alaska Statute 19.45.001(8) states:

"Highways includes a highway (whether included in the primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;" and

7. WHEREAS by statute, AS 19 SLA 1923; 123 SLA 1951; 35 SLA 1953; AS 19.10.010, the State of Alaska has accepted the RS 2477 grant.

8. The RS 2477 grant has also been accepted in many cases by actual public use or expenditure of public monies on unreserved public lands for highway purposes.

POLICIES AND PROCEDURES

9. DOT&PF shall have responsibility for asserting and for identifying and submitting maps to BLM of all RS 2477 rights-of-way established before October 21, 1976, identified on the list of state maintained highways. DOT&PF's responsibility under this paragraph includes both state and non state lands.

10. DNR or DOT&PF may identify, assert, and submit maps and evidence of use to BLM for all other RS 2477 rights-of-way established before October 21, 1976, situated upon any land within the State of Alaska.

11. DNR or DOT&PF shall accept evidence of use on any right-of-way established before October 21, 1976, from other state agencies, local governments, and members of the public. For all claims of RS 2477 rights-of-way which involve state land or provide access to state land or public water an ADL/LAS case file will be established.

12. DNR or DOT&PF may maintain duplicate sets of all files regarding RS 2477 rights-of-way. All newly created RS 2477 files, or any documents to be added to an existing file, will be duplicated and forwarded from one agency to the other.

13. All maps showing the location of RS 2477 rights-of-way established before October 21, 1976, submitted to BLM shall be the best maps possible but not of lesser detail than standard USGS maps at a scale 1:63,360. Maps and supporting documentation shall be submitted by both agencies concurrently. The submission of such maps showing the location of RS 2477 rights-of-way on public lands shall not be conclusive evidence as to their existence. Similarly, a failure to show the location of RS 2477 rights-of-way on any map shall not preclude a later finding as to their existence.

14. There shall be established an RS 2477 coordinating committee in the Northern Region of Alaska composed of DNR, DOT&PF and BLM. The purposes for this committee are as follows:

- (a) coordination of agency priorities for identifying, locating, and asserting RS 2477 rights-of-way;
- (b) coordination of RS 2477 processing procedures for identifying, locating, establishing case files, making assertions, and platting claims on both federal and state land status plats; and
- (c) coordination of requests made to and by the agencies.

15. Each assertion of the existence of an RS 2477 right-of-way made pursuant to this agreement and the submissions to BLM will be reviewed by BLM to ensure the land was unreserved public land as of the date claimed and was established prior to the repeal of the law on October 21, 1976. BLM will not adjudicate the validity of RS 2477 assertions.

16. BLM, DNR, and DOT&PF shall each issue a serial number and establish a case file for each claim made pursuant to this agreement. All correspondence shall reference all agencies' file numbers.

17. BLM shall plot each RS 2477 right-of-way asserted on their Master Title Plats when the following criteria are met (BLM Manual 2801.24 B.1, Rel. 2-152, 9/10/82):

1. Criteria for identification of R.S. 2477 Public Highways, include four elements:

a. In order for a valid right-of-way to come into existence, there must have been the actual building (construction) of a highway. Mere use, planning, or surveying, does not equal construction. However, construction may not have occurred all at once. Road maintenance often equals improvement, or even construction.

Increments of maintenance over several years may equal construction. When public funds have been spent on the road it may be a public road. When the history of a road is unknown or questionable, its mere existence in a condition adequate for public use may be evidence that construction has taken place.

b. A highway is freely open to everyone. Roads that have had access restricted to the public by locked gates or other means may not be public highways.

c. The construction of a public highway on unreserved public land must have occurred prior to October 21, 1976.

d. A State has to have a procedure to confirm the R.S. 2477 public highway right-of-way permit.

18. This MOU establishes the state's procedure to confirm the RS 2477 and thereby fulfills item d in paragraph 17 above.

19. DNR shall plot each RS 2477 right-of-way asserted on their land status plats.

20. Nothing in this Memorandum of Understanding shall obligate any party in the expenditure of funds, or for future payments of money, in excess of appropriations authorized by law.


21. Each party agrees that it will be responsible for its own acts and the results thereof and each party shall not be responsible for the acts of the other parties; and each party agrees it will assume to itself risk and liability resulting in any manner under this agreement.

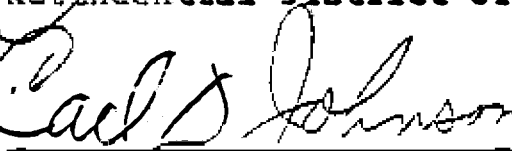
22. Nothing in this MOU is intended to limit agency or individual rights to normal administrative or judicial appeal processes.


23. Nothing herein is intended to conflict with Federal, State or local laws or regulations. If there are conflicts, this agreement will be amended as soon as practical to bring it into conformance with conflicting laws or regulations.

24. It is understood by all parties that individual citizens may be entitled to assert rights-of-way under RS 2477 notwithstanding this agreement. Nothing in this Agreement shall affect the right of private citizens to assert rights-of-way under RS 2477 in conformance with applicable law.

25. The effective date of this agreement shall be from the date of final signature. The agreement shall remain in effect until the parties jointly agree otherwise.


Date 9-28, 1984
Jerry L. Brossia, District Manager,
Northcentral District Office, Alaska Department of Natural Resources


Date 9/28/ 1984
Carl Johnson, District Manager,
Fairbanks District Office, Bureau of Land Management


Date 28 Sept, 1984
E. Glenzer, Deputy Commissioner,
Northern Region, Alaska Department of Transportation & Public
Facilities

RECEIVED
BUREAU OF LAND
MANAGEMENT, GOVERNOR

Dec 28 10 26 AM '84

DISTRICT
FAIRBANKS NORTH CENTRAL DISTRICT
420 AIRPORT ROAD
FAIRBANKS, ALASKA 99701-3896
(907)479-2243

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

December 26,

Carl Johnson, District Manager
Bureau of Land Management
P.O. Box 1150
Fairbanks, Alaska 99701

Reference: 1974 Department of Highway Assertion

Dear Carl:

In 1974, Commissioner Campbell of the Department of Highways sent BLM a trail inventory for the State of Alaska. This inventory was to reaffirm state ownership of these trails. Many of these trails had been dedicated to the state:

- 1) under the Ombudsman Act
- 2) RS 2477 grant under 43 U.S.C. 932

We assume that since the ownership of these right-of-ways was never questioned by BLM, that BLM recognizes their validity or existence.

In our talks leading to the September 1984 agreement, this previous inventory was discussed. BLM was concerned that this prior assertion was of such a scale as to be difficult to plat on your status plats. While in principle the state agrees the scale submitted to BLM may be difficult to plat, we feel it does represent a positive act on the part of the state to clearly accept the RS 2477 grant.

It was therefore our intention in our September 1984 agreement to further define these right-of-ways by submitting more detailed maps to assist you in platting them on your status plats. This process would also allow us to submit assertions left off the 1974 document.

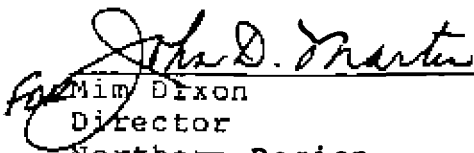
We were also under the impression that since BLM was the record keeper for all federal lands that BLM would plat these right-of-ways on all federal lands.

It is our sincere hope that this letter further defines our intention to protect state right-of-ways in our 1974 transmittal to BLM.

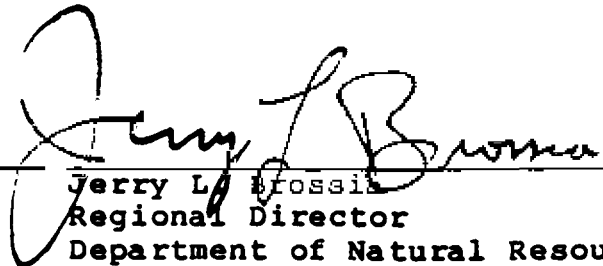
Carl Johnson
December 26; 1984
Page Two

We appreciate your support and effort to protect and preserve access right-of-ways and look forward to working with you in the future to resolve the many facets revolving around the RS 2477 issue.

Sincerely,


John D. Martin

Mim Dixon
Director
Northern Region
Division of Planning
Department of Transportation &
Public Facilities


Jerry L. Brossie

Regional Director
Department of Natural Resources

cc:

H. Glenzer, Jr., Deputy Commissioner, Northern Region, Department
of Transportation and Public Facilities
Esther Wunnicke, Commissioner, Department of Natural Resources
John McDonagh, Assistant Attorney General, Fairbanks