



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

2800 (932)

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

October 30, 1980

Instruction Memorandum No. AK 81-32
Expires 9/30/81

To: DM's

From: State Director

Subject: Applications Under 2802.5 for Unauthorized Rights-of-Way
Existing Prior to October 21, 1976

Washington Office Instruction Memorandum 80-822 is attached. It sets forth certain procedures for soliciting and processing applications for unauthorized right-of-way uses, on public lands, which existed prior to October 21, 1976 (the date of FLPMA). Individuals or Corporations maintaining such uses should be encouraged to file right-of-way applications so their use can be legalized.

Such uses can no longer be recognized by the Bureau unless we have a right-of-way application on file so our records reflect the use. Users without permits or rights-of-way may be subject to trespass actions in the future.

You will note that I.M. 80-822 has reduced the requirements for information to be supplied by the applicant and that no cultural resource clearance is necessary unless new construction is required.

Because of budget constraints such work should be done as time permits and when other work is being done in a given area.

Fred Wolf
Associate

Enclosure

Distribution:
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2800 (932)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

2800 (331)

September 29, 1980

Instruction Memorandum No. 80-822
Expires 9-30-81

To: AFO's

From: Director

Subject: Applications Under 43 CFR 2802.5 for Unauthorized Rights-of-Way
That Existed Prior to October 21, 1976

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The newly adopted 2800 regulations provide for field manager discretion and require only the information that is commensurate to the situation and of right-of-way being sought. Part 2802.5 provides some guidance on the above subject. Specific guidance is provided by this memorandum to assure uniform use of the 2800 regulations when processing applications for these rights-of-way. This guidance is:

1. 43 CFR 2802.1 contains information relative to the preapplication activity. This is a very important phase of the total right-of-way granting process and is an essential part of resolving unauthorized right-of-way uses. You are to make every effort to contact those parties who own unauthorized right-of-way facilities on public land. This contact is to inform the parties of the Bureau's position and requirements under new regulations, and to listen to the unauthorized users, and obtain commitments to legalize the unauthorized land use.

2. The requirements of 43 CFR 2802.3-1, Applicant Qualifications and Disclosure, need not be provided with each application, if the data is already on file in a Bureau office. The applicant need only to specify the office location and that the information is accurate.

3. 43 CFR 2802.3-2, Technical and Financial Capability, requires certain information prior to the commencement of construction. In view of the fact that construction was completed prior to October 21, 1976, and that no new construction is contemplated at this time, you need not require the applicant to file any information pursuant to 2802.3-2 when filing an application under 43 CFR 2802.5.

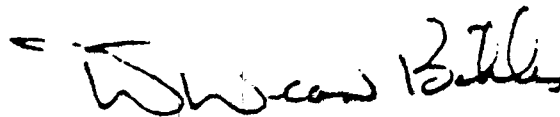
4. Only parts (b)(1) and (4) of 43 CFR 2802.3-3, Project Description, are required of an applicant.

5. A centerline survey is required, and must be shown on a map or aerial photograph. The map or aerial photograph must, as a minimum, contain the information required in 43 CFR 2802.3-6(b)(1) through (6). To meet these requirements, photogrammetric protraction surveys or other indirect methods for determining bearings and distances may be employed in lieu of on-the-ground field surveys.

6. A cultural resource clearance is not needed prior to issuance of a right-of-way grant for an existing facility (use). However, the following stipulation is to be included in each grant issued:

"Prior to undertaking any surface disturbing activities subsequent to the date of this grant, the grantee shall conduct a cultural resource inventory and submit a report of the findings to the authorized officer. Grantee shall not commence any surface disturbing activities until notified by the authorized officer that the cultural resources report has been approved. Normal access road maintenance and travel may occur without a clearance."

As stated earlier, the intent of 43 CFR 2800 is to permit a maximum amount of discretion by the authorized officer. Those who control the subject unauthorized right-of-way facilities or uses are to be extended the maximum amount of cooperation. The object of this effort is to legalize these facilities or uses for owner protection and to update the Bureau's land records for management purposes.

A handwritten signature in black ink, appearing to read "William B. Ballew". The signature is written in a cursive style with a large initial "W".

Assistant Director, Lands and Rights of Way