

MEMORANDUM

State of Alaska

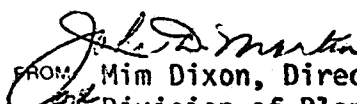
H. Glenzer, Jr.
Deputy Commissioner
Northern Region

DATE: May 7, 1984

FILE NO: 300N/RS2477

TELEPHONE NO: 479-4281

SUBJECT: BLM/DOT&PF Task Force
RS 2477 Rights-of-Way


FROM: Mim Dixon, Director
Division of Planning
Northern Region

At the BLM/DOT&PF Annual Meeting April 27, 1984 it was agreed to establish a joint task force to investigate and discuss problems with Revised Statute (RS) 2477 rights-of-way. Members are Dwight Hempel, BLM, and Mim Dixon, DOT&PF. The Department of Natural Resources (DNR) will be invited to join. Planning has already been working with DNR in Anchorage to identify a process for confirming the State and public claims under RS 2477. Several problems regarding these roads have been indentified.

Revised Statute (RS) 2477 (U.S.C., title 43, section 932) established an extensive network of public rights-of-way in the State. The entire law states:

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

Although RS 2477 was repealed in 1976 by Public Law 94-579, section 705 (90 stat. 2793), those rights-of-way previously established remain valid

Since RS 2477 was written in such a brief and nonspecific manner, it does not establish criteria for determining the location or width of the rights-of-way nor does it define what constitutes a "highway." What was considered a "highway" one hundred eighteen years ago when the law was passed differs greatly from what is considered a highway today. A further problem is that the procedure for identifying and claiming rights-of-way was not established.

RS 2477 roads have provided much of the access to areas of Alaska in the past and continue to do so. Historically, these roads were used for trade routes and access to mining areas. Today, they serve as access for mineral development, forestry, recreation, agriculture, hunting, fishing, inter-village travel, and access to homesteads, homesites, and other land disposals. Most of the well established, frequently traveled trails are RS 2477 roads.

The Alaska Statehood Act, the Alaska Native Claims Settlement Act (ANCSA), and the Alaska National Interest Lands Conservation Act (ANILCA) all initiated major changes in land ownership in Alaska. As land is transferred from the Public Domain to the State, native corporations, private individuals, and other Federal agencies, a diversity of views regarding access and land management policies becomes involved. Some landowners wish to regulate use by type of vehicle, weight, time of year, etc. Some favor preserving access for local residents. Others prefer no access at

all. Additionally, as land is conveyed, the validity of RS 2477's and the presence of RS 2477's as a "valid existing right" is being questioned. Confusion among both State and Federal agencies as to the interpretation of the RS 2477 law continues to hinder management and use of RS 2477 trails/roads. It has become apparent that the public requires assistance in identifying RS 2477 roads and State, Federal and local governments, native corporations, and other property owners need to know the location and authorized uses of RS 2477 roads in order to reasonably manage their lands.

In April, Dave Pennella of my staff met with the staff of the Department of Natural Resources (DNR) in Anchorage to discuss possible solutions to these problems. The entire process to identify and assert claims to all RS 2477's could take many years and become a multi-phase process. However, during the discussions, it was recommended that as a first step, we should have those RS 2477 roads claimed by the State drafted onto both DNR and BLM land status plats. Placing the roads on the land status plats would give more credibility to the State's claims and would establish for the record both a file and a geographic document asserting the claims. Thus, when land is conveyed, the State and public RS 2477 claims would be excluded from the land conveyed and would be much more viable than only a "valid existing rights" clause. Further, by the State documenting its' claims, other parties are put into the position of challenging the State's claim rather than vice versa. Presently, on conveyed land, the State may have to prove "valid existing rights," but if the trails were already on plats, anyone who disagreed would have to challenge the State's claim. Claiming the RS 2477's in this manner is only an administrative determination: BLM does not adjudicate such claims. If someone were to challenge the State, the State's claim would still have to be proven in court. However we would certainly be in a better position to do this.

It was recommended that this become a cooperative effort by both DNR and DOT&PF. In order to initiate this project, compile information, establish a procedure, and to begin a cooperative effort by DNR and DOT&PF, the possibility of a Memorandum of Understanding (MOU) between the two Departments was mentioned. Some preliminary ideas on the MOU were also discussed. At this time, no further work has been done on the MOU pending discussions within our Department, a consolidation of efforts, and determination of policy and the results of the first meeting of the BLM/DOT&PF task force. With your approval, we will continue to work on a draft MOU at the staff level.

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DP:lf

cc: Area & Local Planning Staff
Harold Cameron, R-O-W Chief
John Horn, M&O Director
William McMullen, D&C Director
Mike Tinker, Environmental

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