

RS 2477 Project

Background

Revised Statute 2477 (RS 2477) was a congressional grant of rights of way which provided: "The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

RS 2477 was repealed in 1976 which marked a dramatic change in federal land management policy. However, the RS 2477 rights of way that existed at that date expressly remained a valid existing right. As a result there are thousands of RS 2477 rights of way across the western United States and Alaska which, as congress intended, provided an important role in settling those areas. In Alaska, these rights of way continue to play an essential role in accessing Alaska's lands. To date, DNR has researched over 2,000 routes and determined that approximately 647 qualify under the RS 2477 statute.

What are RS 2477 Rights-of-Way?

The RS 2477 right of way was a self executing grant, meaning that the grant required no formal process or action by the federal government, but rather the grant automatically took effect once certain conditions were met. A RS 2477 right of way would come into existence in Alaska automatically if a "public highway" was established (constructed by use or mechanical construction) across public lands according to Alaska law.

Besides the construction of the right of way to complete the grant, there must have been an acceptance of the grant. Acceptance can take place either by a positive act on the part of the appropriate public authorities, clearly manifesting an intention to accept a grant or by public use for such a period of time and under such conditions as to indicate that the grant had been accepted. Expenditure of public money for construction or maintenance is often used as evidence of acceptance but it is not required.

If the facts show that the right of way was constructed and accepted while the underlying property was unreserved federally owned land, the federal government granted the right of way to the State of Alaska. The right of way is treated similar to an easement over the land. The public has the right to use the right of way within the scope of the grant, but has no right to exceed that use. The scope of use is limited to the use that took place prior to 1976. The underlying land owner may use the land in any fashion that does not interfere with the scope of use that has been established.

The underlying property owner may not restrict the "reasonable and necessary" use as measured "in light of traditional uses to which the right of way was put." Additionally, federal land managers may be able to "reasonably regulate" the right of way consistent with federal regulations within their jurisdiction. Use of the land outside the right of way or beyond its scope could constitute trespass on private land or violate local, state or federal regulations on public land. The RS 2477 right of way may be maintained, "to the extent reasonably necessary to ensure safe use consistent with its historical uses."

Any subsequent owner to the federal government receives the property subject to a "valid existing right" that granted the RS 2477 right of way with its scope of use, regardless of when the State had asserted that interest, or the right of way's present condition or use.

As a self-executing grant directly from Congress, a valid RS 2477 right of way cannot be vacated by federal land managers, though they may have some right to reasonably manage the development and use of the RS 2477. However, federal managers have recently refused to acknowledge the existence of any RS 2477 on federal lands, unless it has been through a Quiet Title Action. This has clouded non-ANILCA protected access on federal lands.

At this writing (June 2010) there is no federal litigation in progress in Alaska quieting title to RS 2477s, and previous Alaskan litigation in federal court ended in settlement, rather than establishing clear federal case law. Additionally there currently are federal cases in the lower forty-eight that may establish instructive case law and hopefully clear up ambiguities.

A July 17, 2002 Attorney General Informal Opinion concluded: Alaska courts will apply state law to determine the scope of an RS 2477 right-of-way and will most likely apply the common law of easements applicable to private parties to decide the uses to which R.S. 2477 rights-of-way may be put. The allowable improvements to an RS 2477 right-of-way and the allowable uses thereof by the public will most likely be measured by that which is "reasonably necessary" in light of the historic uses made of the road before October 21, 1976. We believe Ninth Circuit precedent supports the application of state law to determine the scope of an RS 2477.

The RS 2477 Adjudication

Since 1993, the Department of Natural Resources (DNR) has received varying levels of funding to pursue the research and adjudication for RS 2477 rights-of-way. This project identifies routes throughout the state that appear to qualify as valid public

rights-of-way under RS 2477. In recent years, Alaska court cases have determined the legal validity of RS 2477 routes. In the past, the status of most routes was typically uncontested and acknowledged to be legally valid under 43 USC 932 - RS 2477. To date the legislature has not codified additional RS 2477s adjudicated by the department. However, this does not make those adjudicated RS 2477 rights-of-way invalid. At this writing, additional routes are being studied and adjudicated for validity. This work will continue as funding and priorities allow.

To successfully document an RS 2477 right-of-way on a historic route, the route must be shown to have been constructed or used when the land was unreserved federal land.

Typical route documentation includes:

- Alaska Road Commission annual reports and maps
- U.S. Geological Survey bulletins, reports, field notes, and maps
- U.S. Postal Service contracts, site reports, and maps
- Other publications (books, newspapers, magazines)
- Personal accounts (affidavits) are also valuable evidence of route use and construction.

If you have documentation that supports the validity of existing RS2477s or of routes you believe qualify as RS2477s, please submit that information to:

Alaska Department of Natural Resources
Public Access Assertion and Defense Unit
550 W. 7th Ave, Suite 1420
Anchorage, AK 99501
(907) 269-4755

If you need general information about RS 2477, the statute changes, or questions about a particular route, contact:

Alaska Department of Natural Resources
Public Information Center
550 W 7th Ave, Suite 1260
Anchorage, AK 99501
(907) 269-8400

RS 2477

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