

## Bennett, John F (DOT)

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**From:** Carey Mills [ccmalaska@aol.com]  
**Sent:** Thursday, February 02, 2012 8:54 PM  
**To:** Ogan, William S (DNR)  
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**Subject:** Incorrect Information

Scott,

I am sending a highlited copy of your Legislative Briefing.

The Recordable Disclaimer, the application per FLPMA and confirmation via the federal land management plan process will not have any real consequence regarding RS 2477 rights-of-way for the following reasons:

1. On Sept. 30, 1996 the United States Congress, revoked and denied the authority and jurisdiction of the Bureau of Land Management to recognize, manage or determine the validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932):“ No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act.” ). (Department of the Interior and Related Agencies Appropriations Act, § 108, enacted by the Omnibus Consolidated Appropriations Act, 1997, Pub L., No. 104-208, 110 Stat. 3009 (1996))
2. On February 20, 2009, Ron Wenker, Acting Director of the Bureau of Land Management, issued a Memorandum to all State Directors ordering and mandating the State Directors not to process or review any claims under RS 2477 rights-of-way.
3. On March 19, 2010 Mark Fullmer, Chief, Branch of Resolution. Acting Chief, Lands and Realty Division of Alaska Lands of the Bureau of Land Management, sent an e-mail stating: “RS 2477 rights-of-way arise by operation of law, entirely outside the adjudicative authority and jurisdiction of the BLM. Any RS 2477 rights-of-way that is determined to be valid is already included in the general reservation of “valid existing rights” which appears in every conveyance document we issue. Only the courts can adjudicate an RS 2477 rights-of-way.”
4. On May 6, 2010 Mark Fullmer, Chief, Branch of Resolution. Acting Chief, Lands and Realty Division of Alaska Lands of the Bureau of Land Management, sent an e-mail to the

Larry P. Jackson, Resource Branch Supervisor, BLM-Eastern Interior Field Office stating: “Our conveyance documents, including the Patent involved in Mr. Mills’ issue, DO reserve and protect any valid existing right under RS 2477. Our position is that we do not have authority to adjudicate (make a final determination) as to whether an asserted RS 2477 is valid or not, that is up to the courts. We have no authority to recognize, or reject, an asserted RS 2477.”

5. On May 6, 2010 Mark Fullmer, Chief, Branch of Resolution. Acting Chief, Lands and Realty Division of Alaska Lands of the Bureau of Land Management, sent an e-mail to the Larry P. Jackson, Resource Branch Supervisor, BLM-Eastern Interior Field Office stating: “BLM modified its approach to RS 2477 claims after losing: Southern Utah Wilderness Alliance v. Bureau of Land Management, 425 F.3d 735 (10th Circuit, 2005).” “The court made it clear that determining the validity of a claim under RS 2477 was a judicial, not an executive branch, function.”
6. The Interior Board of Land Appeal acknowledge that no federal agency can determine the Fortymile Station-Eagle Trail (RST 1594) to be a valid RS 2477 rights-of way. And further stated: “...but ultimately the matter must be resolved in court, where what is at issue is whether the State has, by some means, accepted the grant.”

I believe it is very important that you correct this portion of your briefing because it has given the legislators the wrong suppositions. (See the attached letter from Senator Thomas).

If there is any other information that I can provide regarding the RS 2477 issue please feel free to contact me anytime.

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**To:** Carey Mills

**Subject:**

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<<RS 2477 Legislative Briefing Paper (rev 12.01.25).doc>>