ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

3815 HTRA SB 115 - SJR 10 (FILE 1)

691

missioner may require oil and gas leases issued under this section to contain a provision requiring the lessee to operate under a reasonable cooperative or unit plan, and may prescribe a plan under which the lessee must operate. The plan must adequately protect all parties in interest, including the state.

(q) A plan authorized by (p) of this section, which includes land owned by the state, may contain a provision vesting the commissioner, or a person, committee, or state agency, with authority to modify from time to time the rate of prospecting and development and the quantity and rate of production under the plan. All leases operated under a plan approved or prescribed by the commissioner are excepted in determining holdings or control under AS 38.05.140. The provisions of this section concerning cooperative or unit plans are in addition to and do not affect AS 31.05.

(r) Producing acreage on a known geologic structure of a producing oil or gas field is excluded from chargeability as against the acreage limitation provisions of AS 38.05.140.

(s) When separate tracts cannot be individually developed and operated in conformity with an established well-spacing or development program, a lease, or a portion of a lease, may be pooled with other land, whether or not owned by the state, under a communization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest. Operations or production under the agreement are considered as operations or production as to each lease committed to the agreement.

(t) The commissioner may prescribe conditions and approve, on conditions, drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, when, in the discretion of the commissioner, the conservation of natural resources or the public convenience or necessity requires it or the interests of the state are best served. All leases operated under approved drilling or development contracts and interests under them, are excepted in determining holding or control under AS 38.05.140.

(u) To avoid waste or to promote conservation of natural resources, the commissioner may authorize the subsurface storage of oil or gas whether or not produced from state land, in land leased or subject to lease under this section. This authorization may provide for the payment of a storage fee or rental on the stored oil or gas, or, instead of the fee or rental, for a royalty other than that prescribed in the lease when the stored oil or gas is produced in conjunction with oil or gas not previously produced. A lease on which storage is so authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(v) *[Repealed, § 36 ch 94 SLA 1980.]*

(w) Notwithstanding any other provisions of this section, land which has been offered for lease within the previous five years and which received no bids at competitive sale or for which no bid was accepted may be, at the discretion of the commissioner, immediately offered for lease, under regulations adopted by the commissioner, upon terms appearing most advantageous to the state; however, noncompetitive leasing is prohibited. The commissioner shall establish a royalty determined to be in the public interest but not less than 12½ percent. A lease must provide for payment to the state or rental but need not adhere to the rental schedule in (n) of this section nor to the 5,760-acres-per-lease limitation in (m) of this section. The lease term may not exceed five years except as provided in (m) and (o) of this section.

(x) A lessee conducting or permitting any exploration for, or development or production of, oil or gas on state land shall provide the commissioner access to all noninterpretive data obtained from that lease and shall provide copies of that data, as the commissioner may request. The confidentiality provisions of AS 38.05.035 apply to the information obtained under this subsection.

(y) A noncompetitive lease existing at October 10, 1978 shall be extended for a period of two years and so long thereafter as oil and gas is produced in paying quantities. A noncompetitive lease extended under this subsection is subject to the regulations in force at the expiration of the initial five-year term of the lease. No extension may be granted, however, unless within a period of 90 days before the expiration date an application for extension is filed by the record title holder or an assignee whose assignment has been filed for approval, or an operator whose operating agreement has been filed for approval.

(z) No leases may be issued under this section without the inclusion of the following language: "The landowners' royalty share of the unit production allocated to each separately owned tract shall be regarded as royalty to be distributed to and among, or the proceeds of it paid to, the landowners, free and clear of all unit expense and free of any lien for it." Leases issued in violation of this subsection shall, for all purposes, be construed as containing the language required by this subsection. (§ 3(7) art VIII ch 169 SLA 1959; am § 18 ch 61 SLA 1960; am § 1 ch 124 SLA 1962; am §§ 4—7 ch 30 SLA 1964; am § 20 ch 70 SLA 1964; am § 2 ch 91 SLA 1967; am § 1 ch 65 SLA 1969; am § 1 ch 86 SLA 1970; am § 1 ch 155 SLA 1978; am § 16 ch 160 SLA 1978; am §§ 3, 4 ch 65 SLA 1979; am § 6 ch 18 SLA 1980; am § 36 ch 94 SLA 1980; am §§ 1 — 5 ch 111 SLA 1980; am §§ 11, 12 ch 161 SLA 1984)

Cross references. — For establishment of drilling units for pools, see AS 31.05.100.

Effect of amendments. — The first 1980 amendment substituted "AS 37.13.010" for "AS 37.10.065" following "permanent fund under" near the middle of subsection (g).

The second 1980 amendment repealed subsection (v).

The third 1980 amendment, in subsection (b), inserted "five-year" and "consisting of a schedule of proposed lease sales and," deleted "third and fourth calendar years following the" preceding "calendar year," and added at the end of the subsection "and the following four calendar years"; rewrote subsection (c); in subsection (d), added "or" at the end of paragraph (3), and added paragraph (4); in paragraph (2) of subsection (e), added "if determined" at the beginning of the paragraph, inserted "the bidding methods to be used for," and deleted "and, if determined, the bidding methods to be used" following "calendar years" at the end of the paragraph; and in subsection (w), inserted "or for which no bid was accepted" near the beginning of the subsection.

The 1984 amendment deleted a reference to the Alaska renewable resources development fund under AS 37.11.020 at the end of subsection (g) and in the last sentence of subsection (i), and made a minor stylistic change in the next-to-last sentence of subsection (i).

Opinions of attorney general. — Former AS 38.05.305(a) did not apply to actions approving unit agreements in which one automatic consequence of unitization would be extension of the lease terms where the leases were issued prior to September 22, 1977, since extension of a lease term upon unitization did not constitute "renewal" within the meaning of former AS 38.05.305(a); moreover, there was good reason to believe that former AS 38.05.305(a) would also be inapplicable in the case of a unit involving state leases issued after September 22, 1977. November 25, 1977, Op. Att'y Gen.

The public notice requirement of AS 38.05.945 probably does not apply to the automatic lease term extension that occurs as a consequence of unitization since such extension is a measure to enhance the feasibility of unitized operation, not a disposal action. November 25, 1977, Op. Att'y Gen.

NOTES TO DECISIONS

Purpose of subsection (a). — The provisions of subsection (a) of this section were intended to insure that leases on valuable oil and gas producing state lands will be made available to the public on a fair and equitable basis, that the state will be adequately compensated for its natural resources, and that the state's resources are developed in an orderly fashion. For the commissioner to decide that these purposes are furthered by providing for bidding by cash bonus cannot be said to be unreasonable. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

And construction thereof. — The only reasonable construction that can be placed on subsection (a) of this section is that the legislature intended to give the commissioner broad authority to determine the kind of bonus he will accept. The legislature at the time it passed subsection (a) was undoubtedly aware that under competitive bidding procedures different forms of bonuses might be offered. It did not itself prescribe a particular form, but instead provided that competitive bidding shall be "under general regulations," and that lands shall be leased upon the payment of "such bonus as may be accepted by the commissioner." The plain language of the statute shows that royalties were to be fixed independently of the acceptance of the highest bonus. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The legislature has given the commissioner "broad authority" concerning competitive bidding procedures. Champion Oil Co. v. Herbert, Sup. Ct. Op. No. 1621 (File No. 3385), 578 P.2d 961, cert. denied, 439 U.S. 980, 99 S. Ct. 565, 58 L. Ed. 2d 650 (1978).

Subsection (a) of this section does not embody an overbroad delegation of legislative authority to the commissioner. Champion Oil Co. v. Herbert, Sup. Ct. Op. No. 1621 (File No. 3385), 578 P.2d 961, cert. denied, 439 U.S. 980, 99 S. Ct. 565, 58 L. Ed. 2d 650 (1978).

Power to change law respecting lease extensions is vested in state. — The governmental power to change the law respecting the granting of lease extensions, vested in Congress prior to statehood and preserved by § 6(k) of the Alaska Statehood Act, became vested in the state when the lands subject to the lease were granted to the state as its property. Kirkpatrick v. Commissioner, Dep't of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).

And has been exercised by the Alaska Land Act. — The state has exer-

cised its power to change the law respecting lease extensions by the Alaska Land Act and by regulations adopted under its authority. Kirkpatrick v. Commissioner, Dep't of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).

Subsection (c) has no application to pre-statehood federal leases. — Read in the context of article 6 of this chapter, it becomes apparent that subsection (c) of this section, as to extensions, relates only to leases issued by the state under the authority of the Alaska Land Act, and is not pertinent with respect to pre-statehood federal leases. Kirkpatrick v. Commissioner, Dep't of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).

Subsection (c) of this section, relating to extensions of state oil and gas leases has no application to federal leases of lands granted to the state by the Alaska Statehood Act. Hence, appellant had no right to an extension of its federal lease, but only a right, which it was granted under the commissioner's regulations, to a state lease for a period of two years following expiration of the original five-year term of its federal lease. Kirkpatrick v. Commissioner, Dep't of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).

Nor to lands classified by Statehood Act as competitive. — The language of this section is not directed to a situation where lands have been classified as competitive by the Alaska Land Act itself, and where there is no room for the exercise of the commissioner's authority to make classifications. Kirkpatrick v. Commissioner, Dep't of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).

Effect of Alaska Statehood Act and statutes on pre-statehood federal leases. — For effect of the Alaska Statehood Act and statutes enacted by the Alaska State Legislature on oil and gas leases of Alaska lands issued by the United States Department of the Interior while Alaska was a territory of the United States, see Kirkpatrick v. Commissioner, Dep't of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).

"Commercial quantities" construed. — See Pan Am. Petroleum Corp. v. Shell Oil Co., Sup. Ct. Op. No. 553 (File No. 918), 455 P.2d 12 (1969).

The words "bonus" and "royalty" in their broadest concepts and meanings are conflicting and overlapping. On the other hand, when it is necessary that they be distinguished, there is a narrower concept of the two terms as they are ordinarily and commonly used and understood in the oil and gas industry in which they do not conflict but are harmonicus. In this narrower sense, a reservation or a payment of a part or percentage of production under a lease which is to continue throughout the life of the lease is regarded as "royalty," and a sum certain to be paid in cash or out of production is regarded as "bonus." Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

In its broadest sense, "bonus" is any consideration given for a lease over and beyond the usual ⅛th royalty, whether the additional consideration be paid or payable and whether paid in cash or payable out of production. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

In its broadest aspect, "royalty" is a share of the product or profit reserved by the owner for permitting another to use the property. In this broad sense, a sum certain to be paid out of production, although "bonus" in that it is consideration in addition to the usual ⅛th royalty, would also be "royalty." Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Choosing concept of "bonus" most commonly encountered. — In choosing the concept of "bonus" most commonly encountered in the oil and gas industry, defendants acted neither unreasonably nor arbitrarily. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Requiring compensation for lease immediately upon award of lease. — It is not unreasonable for the commissioner to determine that it is in the state's best interest to receive compensation for the leases immediately upon the award of the lease, rather than to wait for uncertain sums to arrive in the form of premium royalties. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971); Champion Oil Co. v. Herbert, Sup. Ct. Op. No. 1621 (File No. 3385), 578 P.2d 961, cert. denied, 439 U.S. 980, 99 S. Ct. 565, 58 L. Ed. 2d 650 (1978).

Considering only cash portions of bids. — In considering only the cash portion of plaintiffs' 33 bids, defendants acted pursuant to valid regulations which provided that a lease would be awarded to the bidder offering the highest cash bonus. Since other bids on the 33 tracts contained higher cash offerings than plaintiffs' bids,

the defendants acted properly in determining that the high cash bids on those 33 tracts were the apparent high bids, not plaintiffs' bids. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Commissioner empowered to grant royalty reduction. — This section empowers the commissioner of the Department of Natural Resources, not the director, division of lands, to grant the specified royalty reduction. Union Oil Co. v. State Dep't of Natural Resources, Sup. Ct. Op. No. 1087 (File No. 2025), 526 P.2d 1357 (1974).

Applied in Union Oil Co. v. State, Sup. Ct. Op. No. 1563 (File No. 2650), 574 P.2d 1266 (1978); Hammond v. North Slope Borough, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982); Chevron U.S.A., Inc. v. LeResche, Sup. Ct. Op. No. 2659 (File Nos. 6396, 6648), 665 P.2d 923 (1983).

Stated in McKinnon v. Alpetco Co., Sup. Ct. Op. No. 2413 (File No. 5546), 633 P.2d 281 (1981).

Collateral references. — Abandonment of oil or gas lease by parol declaration, 13 ALR2d 951.

Validity of compulsory pooling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, 37 ALR2d 434.

Oil and gas as "minerals" within deed, lease, or license, 37 ALR2d 1440.

Secondary recovery of oil and gas, 93 ALR2d 451.

Rights of parties to oil and gas lease or royalty deed after expiration of fixed term where production temporarily ceases, 100 ALR2d 885.

Right and measure of recovery for breach of obligation to drill exploratory oil or gas wells, 4 ALR3d 284.

"Dry hole" as "well" within undertaking to drill well, 15 ALR3d 450.

Water use: construction of oil and gas lease provision giving lessee free use of water from lessor's land, 23 ALR3d 1434.

Construction of oil and gas lease as to the lessee's right and duty of geophysical or seismograph exploration or survey, 28 ALR3d 1426.

Distillate: rights, under oil and gas lease, deed, or sales contract, to "distillate," "condensate," or "natural gasoline", 38 ALR3d 983.

Meaning of "paying quantities" in oil and gas lease, 43 ALR3d 8.

Validity, construction, and application of entirety clause in gas and oil lease, 48 ALR3d 706.

Abandoned well: duty and liability as to plugging oil or gas well abandoned or taken out of production, 50 ALR3d 240.

Grant, lease, exception, or reservation of "oil, gas, and other minerals, or the like," as including coal or metallic ores, 59 ALR3d 1146.

Market value: meaning of, and proper method for determining, market value or market price in oil and gas lease requiring royalty to be paid on standard measured by such terms, 10 ALR4th 732.

Sec. 38.05.181. Geothermal resources. (a) The commissioner may, under regulations adopted by the commissioner, grant prospecting permits and leases to a qualified person to explore for, develop, or use geothermal resources. When title to the surface parcel is held by a person other than the state, that person shall have a preferential right to a geothermal prospecting permit or lease for the area underlying the surface parcel. The surface owner must exercise the preference right within 30 days after receiving notice of the application for a permit, or by agreeing to meet the terms of a bid within 60 days after receiving notice of the acceptance of the bid for a lease.

(b) The commissioner may designate a geothermal area or portion of it a competitive geothermal area. A designation as a competitive geothermal area must be on the basis of substantial geologic indications of geothermal resources or on the basis of competitive interest in geothermal resources of the area.

LAW OFFICES

BIRCH, HORTON, BITTNER, MONROE
PESTINGER AND ANDERSON
A PROFESSIONAL CORPORATION
1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 276-1550
TELEX 25-350

711 GAFFNEY ROAD
FAIRBANKS, ALASKA 99701
(907) 452-1556

130 SEWARD STREET, SUITE 211
JUNEAU, ALASKA 99801
(907) 586-2660

1140 CONNECTICUT AVE., N.W., SUITE 1100
WASHINGTON, D.C. 20036
(202) 659-5800

LLOYD W. BIRCH
BURTON E. BITTNER
RONALD S. BIRCH
WILLIAM H. BITTNER
KATHRYN A. BLACK
CONSTANCE C. BROOKS
WILLIAM F. BRYSON
WINSTON S. BURGAMY
RODNEY E. CAMPBELL
JOSEPH H. CHOMSKI
JACK C. CLARK
LARRY R. COHN
PAUL J. FICKEN
LOIS A. FISCHER
JOSEPH W. EVANS
PAUL H. GRANT
HAL R. HORTON
CAROL A. JOHNSON
MARC W. JUREL
STANLEY T. LEWIS
JEFFERLY G. LOWENFELS
CATHARINE C. MACNAIR-SMITH
W. BRUCE MONROE
PATRICK H. PYLE
MICHAEL J. PARISE
SUZANNE C. PESTINGER
MICHAEL V. REGISTER
E. BUDD SHARPE

(NOT ADMITTED IN ALASKA)

TELECOPY TRANSMITTAL COVER SHEET

DATE: 3/5/85

TIME: 11:30 TIME FINISHED: _____

CHARGE TO FILE: Yukon Pacific

PLEASE DELIVER THE FOLLOWING PAGES TO:

Please call ~~Bette Kato's~~ office for pick up of this telecopy A.S.A.P.

THIS TELECOPY IS BEING SENT BY: Jeff Lowenfels

NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 267-1550

3

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE. (907) 276-1550 extension ~~276~~

Rosanne

TELECOPIER OPERATOR
(Xerox 485)

LAW OFFICES
BIRCH, HORTON, BITTNER, PESTINGER AND ANDERSON
A PROFESSIONAL CORPORATION
1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 276-1550
TELECOPIER (907) 276-2822
TELEX 25-854

711 GAFFNEY ROAD
FAIRBANKS, ALASKA 99701
(907) 452-1062

ONE SEALASKA PLAZA, SUITE 301
JUNEAU, ALASKA 99801
(907) 586-2690

1155 CONNECTICUT AVE., N.W.
SUITE 1000
WASHINGTON, D.C. 20036
(202) 659-5500

A.D.C. BAR ONLY
A.D.C. AND ALASKA BAR
ALL OTHERS ALASKA BAR ONLY

March 5, 1985

Representative Kato
Alaska State Legislature
State Capitol Room V (MS3100)
Juneau, Alaska 99811

Via Telecopy

Dear Representative Kato:

I am writing this letter on behalf of Yukon Pacific Corporation, sponsors of the TransAlaska Gas System, at the direction of Mead Treadwell. I am counsel for the Yukon Pacific Corporation.

Yukon Pacific Corporation fully supports passage of H.B. 143 and Senate Bill 115. Either bill would allow for a state pipeline right-of-way lease for transportation of gas along the Dalton Highway.

It is imperative that language similar to that used in CSSB 115 be maintained in H.B. 143 so that the state will continue to have every opportunity to maximize development of the North Slope resources. To be quite honest, as the law now stands, no company could realistically submit an application for a new pipeline project in Alaska. Under the State Right-of-Way Leasing Act (A.S. 38.35. et. seq.) members of the public are given ample opportunity to impact pipeline decisions. During discussions of our application for a state right-of-way we will be working closely with affected communities along the entire route. However that process can't begin without this bill.

We appreciate your attention to this matter.

Sincerely,

BIRCH, HORTON, BITTNER,
PESTINGER & ANDERSON

Jeffrey Lowenfels /By R.M.C.

Jeffrey B. Lowenfels
Counsel for Yukon Pacific
Corporation

JBL/rmc

LETTER FROM JEFFREY B. LOWENFELS,

COUNSEL FOR THE YUKON PACIFIC CORPORATION

* * * * * * * * * * * * *

I am writing this letter on behalf of Yukon Pacific Corporation, sponsor of the TransAlaska Gas System, at the direction of Mead Treadwell. I am counsel for the Yukon Pacific Corporation.

Yukon Pacific Corporation fully supports passage of H.B. 143 and Senate Bill 115. Either bill would allow for a state pipeline right-of-way lease for transportation of gas along the Dalton Highway.

It is imperative that language similar to that used in CSSB 115 be maintained in H.B. 143 so that the state will continue to have every opportunity to maximize development of the North Slope resources. To be quite honest, as the law now stands, no company could realistically submit an application for a new pipeline project in Alaska. Under the State Right-of-Way Leasing Act (A.S. 38.35. et. seq.) members of the public are given ample opportunity to impact pipeline decisions. During discussions of our application for a state right-of-way we will be working closely with affected communities along the entire route. However that process can't begin without this bill.

We appreciate your attention to this matter.

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

SENATE LETTER OF INTENT
FOR
CSSB 115(Res)

It is the intent of the Senate Resources Committee that leases necessary for communication equipment or facilities related to oil or gas activity is included as allowable under Section 1(b)(2) of CSSB 115(Resources).

Adopted by the Senate, February 21, 1985.

4/11

COMMITTEE REPORT

HOUSE

Rules

(7) FURTHER:

3/4/85 (O & G waived 3/1/85)
(Res waived 3/4/85)

Date: 11 April 1985

Mr. Speaker:

The Committee on TRANSPORTATION has had CSSB 115(Res)

"An Act relating to land use and disposal near a highway right-of-way; and providing for an effective date."

under consideration and reports it back as follows:

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ______ [ ] same title [ ] new title

and recommends ______

[✓] AND ~~attaches a~~ Supports Senate "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS

[signatures]

MEMBERS HAVING OTHER RECOMMENDATIONS:

[signature] No Rec

[signature]

CHAIRMAN

H 60

Alaska State Legislature

House of Representatives

Committee on Transportation

Rep. Bette Cato, Chairman

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4858

M E M O R A N D U M

Date: 11 April 1985

To: Irene Cashen, Chief Clerk

From: The House Transportation Committee

Re: Senate Letter of Intent for CSSB 115(Res)

Dear Ms. Cashen:

The House Transportation Committee supports the Senate Letter of Intent for CSSB 115(Res) and passes it out of committee.

SB 17 cont'd

Senator Halford moved and asked unanimous consent that SENATE BILL NO. 17 be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE BILL NO. 17 was read the third time.

The question being: "Shall SENATE BILL NO. 17 (applicability of the scholarship loan program to students attending more than one postsecondary educational institution; efd) pass the Senate?" The roll was taken with the following result:

SB 17 3RD

Yeas: 20 Abood, Bennett, Coghill, DeVries, Eliason, Fahrenkamp, Faiks, Ferguson, Fischer Paul, Fischer Vic, Halford, Josephson, Kelly, Kerttula, Ray, Rodey, Sackett, Sturgulewski, Zharoff, Ziegler

Nays: 0

and so, SENATE BILL NO. 17 passed the Senate.

Senator Halford moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. Without objection, it was so ordered.

SENATE BILL NO. 17 was referred to the secretary for engrossment.

SB 115

SENATE BILL NO. 115 (oil and gas exploration along highway rights-of-way) was read the second time.

Senator Sturgulewski moved and asked unanimous consent for the adoption of the Resources Committee Substitute offered on page 264. Without objection CS FOR SENATE BILL NO. 115 (RES) (land use and disposal near a highway right-of-way; efd) was adopted.

CS FOR SENATE BILL NO. 115 (RES) was read the second time.

SB 115 cont'd

Senator Halford moved and asked unanimous consent that CS FOR SENATE BILL NO. 115 (RES) be considered engrossed, advanced to third reading and placed on final passage. Senator Ray objected, then withdrew his objection. There being no further objection, it was so ordered.

CS FOR SENATE BILL NO. 115 (RES) was read the third time.

Senator Halford moved and asked unanimous consent that the title change be adopted. Without objection, the new title was adopted.

The question being: "Shall CS FOR SENATE BILL NO. 115 (RES) (land use and disposal near a highway right-of-way; efd) pass the Senate?" The roll was taken with the following result:

CSSB 115 RES 3RD

Yeas: 20 Abood, Bennett, Coghill, DeVries, Eliason, Fahrenkamp, Faiks, Ferguson, Fischer Paul, Fischer Vic, Halford, Josephson, Kelly, Kerttula, Ray, Rodey, Sackett, Sturgulewski, Zharoff, Ziegler

Nays: 0

and so, CS FOR SENATE BILL NO. 115 (RES) passed the Senate.

Senator Halford moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. Without objection, it was so ordered.

Senator Ziegler made a parliamentary inquiry, asking at what stage a letter of intent is adopted.

President Bennett stated that hereafter letters of intent would be adopted prior to the vote on a bill.

Senator Halford moved and asked unanimous consent that the Resources Committee Letter of Intent offered on page 264 be adopted as a Senate Letter of Intent. Without objection, the Senate Letter of Intent was adopted.

CS FOR SENATE BILL NO. 115 (RES) was referred to the Secretary for engrossment.

SECOND READING OF HOUSE RESOLUTIONS

HCR 7

HOUSE CONCURRENT RESOLUTION NO. 7 (Joint Special Committee on Foreign Trade) was read the second time.

HOUSE CONCURRENT RESOLUTION NO. 7 was before the Senate on final passage.

The question being: "Shall HOUSE CONCURRENT RESOLUTION NO. 7 (Joint Special Committee on Foreign Trade) pass the Senate?" The roll was taken with the following result:

HCR 7

Yeas:	17	Abood, Bennett, Coghill, DeVries, Eliason, Fahrenkamp, Faiks, Fischer Paul, Fischer Vic, Josephson, Kelly, Kerttula, Ray, Rodey, Sturgulewski, Zharoff, Ziegler
Nays:	2	Ferguson, Halford
Absent:	1	Sackett

Kerttula changed from nay to yea

and so, HOUSE CONCURRENT RESOLUTION NO. 7 passed the Senate, was signed by the President and Secretary and returned to the House.

CITATIONS

Senator Halford moved and asked unanimous consent that the following citations be adopted:

In Memoriam - Stanley Taff
by Senator Sackett
Representative Binkley

Honoring - Western Council Boy Scouts of America
by Representatives Martin, Hanley, Gruenberg, Marrou and Clocksin
Senators Vic Fischer, Sturgulewski, Halford, DeVries, Paul Fischer and Rodey

Without objection, the citations were adopted and referred to the Secretary for transmittal.

SB 183

SENATE BILL NO. 183 by Senator DeVries, entitled:

"An Act making a special appropriation for payment as a grant to the Matanuska-Susitna Borough for various capital improvement projects within the Matanuska-Susitna Borough School District; and providing for an effective date."

was read the first time and referred to the Health, Education and Social Services Committee and the Finance Committee.

SB 184

SENATE BILL NO. 184 by Senator DeVries, entitled:

"An Act making a special appropriation for payment as a grant to the City of Wasilla for water system expansion and making a special appropriation for payment as a grant to the City of Palmer for water main replacement and storm sewers; and providing for an effective date."

was read the first time and referred to the Resources Committee and the Finance Committee.

SB 185

SENATE BILL NO. 185 by Senators Fahrenkamp, Halford, Faiks, Ziegler, Kerttula and Paul Fischer, entitled:

"An Act relating to legislative disapproval of the Alaska Coastal Management Program."

was read the first time and referred to the Resources Committee.

CONSIDERATION OF THE CALENDAR

SECOND READING OF SENATE BILLS

SB 17

SENATE BILL NO. 17 (applicability of the scholarship loan program to students attending more than one postsecondary educational institution; efd) was read the second time.

Representative Ringstad - March 15, 1985

Representative Fuller - March 14 through plane time March 18, 1985

Representative Cotten - March 6 through March 11, 1985

Representative Davis - March 6 through March 11, 1985

Representative Pignalberi - March 6 through March 11, 1985

There being no objection, it was so ordered.

CSSB 115(Res)

The Speaker waived the Resources Committee referral on COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 115 (Resources) (relating to land use and disposal near a highway right-of-way; effective date) at the request of the Co-Chairman. CSSB 115(Res) was sent to the Transportation Committee.

HB 249

Representative Gruenberg added his name as co-sponsor to HOUSE BILL NO. 249 (increasing the excise tax on cigarettes; effective date).

HB 255

Representative Herrmann added her name as co-sponsor to HOUSE BILL NO. 255 (authorizing the Department of Health and Social Services to enter into agreements concerning the care and custody of Native children).

ENGROSSMENT AND ENROLLMENT

CSHB 30(Fin)

CSHB 30(Fin) was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.

CSHB 134(Fin)

The following was enrolled, signed by the Speaker and Chief Clerk, President and Secretary of the Senate and the engrossed and enrolled copier were transmitted to the Office of the Governor at 4:03 p.m., March 1, 1985:

CSHB 134(Fin)
Authorizing the expenditure of no more than $1,600,000 from the disaster relief fund for a sewer system failure in Haines; effective date.

ANNOUNCEMENTS

Reception Association of Alaska School Boards	A.J.Room Baranof Hotel	5:00 p.m., 3/4
Reception Alaska State Hospital Association & the Alaska Rural Electric Coop. Assoc.	Treadwell Room Baranof Hotel	5:30 p.m., 3/4
Breakfast Human Services Coalition	Baranof Hotel	7:15 a.m., 3/6

Revised Weekly Committee Schedule printed under separate cover this date.

ADJOURNMENT

Representative Clocksin moved and asked unanimous consent that the House adjourn until 10:00 a.m., March 6, 1985. There being no objection, the House adjourned at 11:45 a.m.

Irene Cashen
Chief Clerk

SPECIAL ORDERS

Senator Vic Fischer moved and asked unanimous consent that he be excused from a call of the Senate on March 1 and March 4. Without objection, Senator Vic Fischer was excused.

Senator Zharoff moved and asked unanimous consent that he be excused from a call of the Senate February 26-March 1. Without objection, Senator Zharoff was excused.

Senator Coghill moved and asked unanimous consent that he be excused from a call of the Senate on March 1 Without objection, Senator Coghill was excused.

ENGROSSMENT

SB 17

SENATE BILL NO. 17 was engrossed, signed by the President and Secretary and transmitted to the House for consideration.

SB 115

CS FOR SENATE BILL NO. 115 (RES) was engrossed, signed by the President and Secretary and transmitted to the House for consideration with a Senate Letter of Intent.

ADJOURNMENT

Senator Halford moved and asked unanimous consent that the Senate adjourn until 11:00 a.m., February 22, 1985. Without objection, the Senate adjourned at 11:58 a.m.

Peggy Mulligan
Secretary of the Senate

February 1985

Committee meetings in the Capitol
Change in time or place

COMMUNITY AND REGIONAL AFFAIRS - BELTZ RM 211 - 3:30
Feb 21 Local Boundary Commission cont'd
SB 47 Appropriations for water and sewer projects
SB 113 Senior Citizen tax exemptions
26 Unfinished committee bills
28 SB 69 Sale of alcoholic beverages
SB 137 Senior citizen housing

FINANCE - SENATE FINANCE - 8:30 am
Feb 22 U of A, Governor, Depts Environmental Conservation, Revenue, Community & Regional Affairs capital budgets

HEALTH EDUCATION & SOCIAL SERVICES - BELTZ RM 211 - 1:30
Feb 21 Gov Council for Handicapped and Gifted briefing
26 Mental health lands, Fairbanks Mental Health Facility
28 TELECONFERENCE SB 165 Child care centers
SB 109 Chiropractic services under Medicaid

JUDICIARY - BUTROVICH RM 205 - 1:30
Feb 21 SB 56 Longevity bonus; permanent fund; annuity programs

LABOR & COMMERCE - BELTZ RM 211 - 3:30
Feb 22 Confirmation hearing: Commissioner Lounsbury, Dept Commerce & Economic Development

RESOURCES - BUTROVICH RM 205 - 1:30
Feb 22 HB 7 Dept Fish & Game release confidential records
SJR 5 Land Use Council oppose Steese and White Mountain Management Plans
SJR 10 Rights-of-way on BLM plats (RS 2477)
25 DNR overview of Susitna, Tanana & Bristol Bay Plans
SJR 14 Simeonof Island cattle slaughter
27 SB 105 Palmer Hay Flats State Game Refuge
SB 11 Fisheries business tax
Mar 1 Limited Entry Commission overview
SB 83 Limited Entry Act

STATE AFFAIRS - BUTROVICH RM 205 - 8:30 am
Feb 26 SB 173 Campaign reform
27 SB 62 Prohibit aerial wolf hunting TELECONFERENCE

TRANSPORTATION - BUTROVICH RM 205 - 3:30
Feb 22 No meeting
25 SB 82 Weights and measures
Air fare hearing, Alaska and United
27 SJR 11 Jones Act
Mar 1 No meeting
Mar 11-15 School bus hearings

MAJORITY CAUCUS - BUTROVICH RM 205 - AFTER SESSION
Feb 21

ANCHORAGE CAUCUS - HOUSE FINANCE RM - NOON
Feb 22 No meeting

UNFINISHED BUSINESS

Representative Clocksin moved and asked unanimous consent that the following members be excused from a call of the House:

Representative Rieger - March 15, 1985

Representative Pignalberi - March 6 through plane time March 10, 1985

Representative Boucher - After session March 8 through March 11, 1985

Representative Szymanski - March 4, 1985

Representative Shultz - March 7 through March 10, 1985

There being no objection, it was so ordered.

HB 168

The Speaker waived the Judiciary Committee referral on HOUSE BILL NO. 168 (construction contractors; effective date) at the request of the Chairman.

HB 168 was sent to the Finance Committee.

CSSB 115(Res)

The Speaker waived the House Special Committee on Oil & Gas referral on COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 115 (Resources) (land use and disposal near a highway right-of-way; effective date) at the request of the Chairman.

CSSB 115(Res) was sent to the Resources Committee with a further referral to the Transportation Committee.

ENGROSSMENT

CSHB 1(Trsp)

CSHB 1(Trsp) was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.

CSHB 102(Fin)

CSHB 102(Fin) was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.

ANNOUNCEMENTS

Budget & Audit	Capitol 519	Noon, 3/1
Minority Caucus	Capitol 24	Noon, 3/1
Finance	Capitol 519	1:30 p.m., 3/1

HB 130 Educational employees' collective bargaining agreements; eff. date

Revised Weekly Committee Schedule is printed under separate cover this date.

ADJOURNMENT

Representative Clocksin moved and asked unanimous consent that the House adjourn until 11:00 a.m., March 4, 1985. There being no objection, the House adjourned at 11:55 a.m.

Irene Cashen
Chief Clerk

REPORTS OF STANDING COMMITTEES

SB 106

The State Affairs Committee has considered SENATE BILL NO. 106 (relating to Alaska bidder preference) and reports it back as follows: Hurley (Chairman), Cato, Collins, Jenkins, M.M. Miller, Boucher and Navarre recommend do pass. Two zero fiscal notes were attached.

SB 106 was referred to the Finance Committee.

CSSB 115(Res)

The Transportation Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 115 (Resources) (relating to land use and disposal near a highway right-of-way; effective date) and reports it back as follows: Cato (Chairman), Pignalberi, Furnace, Davis, Marrou and Shultz recommend do pass; Herrmann has no recommendation. The Committee supports the Senate Letter of Intent (page 264, Senate Journal).

CSSB 115(Res) was referred to the Rules Committee for placement on the calendar.

HCR 26

The Rules Committee has considered HOUSE CONCURRENT RESOLUTION NO. 26 (proposing amendments to Rule 23 of the Uniform Rules of the Alaska State Legislature relating to committee meetings; effective date), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE CONCURRENT RESOLUTION NO. 26 (Rules) (same title) and reports it back as follows: M.W. Miller (Chairman), Fuller, Grussendorf, Davis and Wallis recommend do pass; Pignalberi has no recommendation; Martin signed "Will be good for a one year experiment."

HCR 26 was returned to the Rules Committee for placement on the calendar.

HB 15

The Community & Regional Affairs Committee has considered HOUSE BILL NO. 15 (requiring an advisory election before an annexation may be proposed to the legislature), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 15 (Community & Regional Affairs):

HB 15

"An Act relating to advisory elections on certain annexation proposals."

and reports it back as follows: Goll (Chairman), Koponen, Marrou and Wallis recommend do pass; Gruenberg, Phillips and Furnace have no recommendation. A fiscal note was attached.

HB 15 was referred to the State Affairs Committee.

The fiscal note appears in House Journal Supplement No. 46.

HB 44

The House Judiciary Committee submitted a letter of intent to accompany their committee report (page 819) for HOUSE BILL NO. 44 (establishing additional state land as marine park units of the state park system). The letter, which was signed by Chairman M.M. Miller, appears below:

HOUSE JUDICIARY COMMITTEE
LETTER OF INTENT
FOR
CSHB 44(Jud)

"The House Judiciary Committee has heard HB 44, establishing a number of marine parks in Southeast Alaska, and has replaced the original bill with CSHB 44 (Judiciary).

It was the intent of the Judiciary Committee, in passing the bill without an additional appropriation to the Department of Natural Resources, that the department should, to the greatest extent possible, initiate planning for the management of marine parks in Southeast and Southcentral Alaska using existing staff and staff time and resources.

This planning process should take into consideration the concerns of legislators that a process be developed for management and the addition of capital improvements as money becomes available and is appropriated by the legislature in future years. The planning should include some initial work on the need for, and proper location of, mooring buoys, docks and other appropriate facilities. The process should also include the initiation of discussions with the U.S. Forest Service for state-federal coordination and cooperation in recreation planning as a part of that federal agency's mandate for recreation improvements as part of their responsibilities of multiple-use management.

The Judiciary Committee is also cognizant of legislative intent of previous years regarding marine parks legislation, that no funding for management or improvement of marine parks established under the program would be made available at least until the late 1980s. In light of that

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James D. Smith
Signature of Camera Operator

10/31/89
Date

02-519 (REV 8/73)

SJR

10

(1,82)

Alaska State Legislature

House of Representatives

Committee on Transportation

Rep. Bette Cato, Chairman

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4858

TO: COMMITTEE MEMBERS

FROM: Committee Staff

DATE: 29 April 1985

RE: CSSJR 10(Res)

Please find in your folders, information regarding CSSJR 10 (RES) divided into the following categories:

LEGISLATIVE ACTION MATERIAL

°CSSJR 10 (Resources) am

°CSSJR 10 (Resources)

°Fiscal Note for CSSJR 10 (Resources) dated 4/18/85

°Senate Finance Committee Letter of Intent for CSSJR 10 (Resources)

°Formal Statement on SJR 10 by Senator Coghill before the Senate Resources Committee on February 22, 1985.

BACKGROUND INFORMATION ON R.S. 2477

°Department of Transportation and Public Facilities "Briefing Paper", an historical analysis

°September 13, 1984 Citizens' Advisory Commission on Federal Areas regarding RS 2477 Rights-of-Way

CORRESPONDENCE OF SUPPORT

°Resolution #2-185 Fairbanks Chamber of Commerce "Resolution Pertaining to Establishment of RS 2477 Rights-of-way"

°February 26, 1985 letter of Citizens' Advisory Commission on Federal Areas

°March 1, 1985 letter of Citizens' Advisory Commission on Federal Areas

°March 1, 1985 Alaska State Chamber of Commerce "Resolution Pertaining To Establishment of RS 2477 Rights-of-Way"

CORRESPONDENCE OF OPPOSITION

°Alaska Native and Managers Association "Resolution Addressing Proposed Plotting of R.S. Rights-of-Way to Public Land Records"

°December 21, 1984 letter of Tanana Chiefs Conference Inc.

°October 23, 1984 letter and November 1, 1984 letter of Interior Village Association

°February 21, 1985 Memorandum of Northern Alaska Environmental Center addressed to the Senate Resources Committee

DETAILED BACKGROUND INFORMATION AND CONCERNS FROM VARIOUS SOURCES

°March 21, 1985 letter of Michael J. Penfold to Senator Sturgelewski (Mr. Penfold is State Director with U.S. Department of Interior, Bureau of Land Management)

°September 28, 1984, Memorandum of Understanding Between Alaska Department of Natural Resources and Alaska Department of Transportation and Public Facilities and Bureau of Land Management

°September 7, 1984 BLM letter regarding R.S. 2477 Issue Paper

°November 28, 1984 BLM Letter regarding Notation of R.S. 2477 Right-of-Way Assertions on the Public Land Records

°U.S. Department of Interior, Office of the Solicitor Memorandum regarding Rights-of-Way on Allotments--R.S. 2477 and Other Access Questions

°February 1985 RS 2477 Regional Trails Assertion Inventory

Committee minutes of previous committee meetings (Senate Resources and Senate Transportation) are available should you desire a copy.

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Phil Holsworth

Senate Committee on Transportation

MEMORANDUM

To: Committee members

From: Committee staff

Date: March 14, 1985

Re: Background materials for CSSJR 10

On Friday, March 15, the committee will consider CSSJR 10 (Res) which urges DNR and DOT/PF to enter into a memorandum of understanding with BLM regarding identification and establishment of RS 2477 rights-of-way throughout the state. These rights-of-way were created under a federal law which dates back to the 1860s, which said in essence that if a person blazed a trail across unappropriated federal lands, that became a public right-of-way. Now, with federal and state bureaucrats formulating land use plans, many of those public access ways are being threatened with vacation, if the State government does not act to assert its public right to the right-of-way.

The background materials, particularly the memorandum from the Citizens' Advisory Commission, explain the problem fairly well. Along with a highlighted copy of the Resources CS, these materials include:

- A statement prepared by Senator Coghill for presentation to the Resources Committee hearing

- The Citizens' Advisory Commission memo explaining the history of the problem

- The currently-effective M.O.U. between DOT/PF, DNR and BLM regarding the northern portion of the state.

- BLM position statement on RS 2477 rights-of-way

- BLM notation memo describing the procedure and effect of BLM notations of RS 2477 rights-of-way on BLM plats

- BLM memo to the Bureau of Indian Affairs regarding RS 2477 rights-of-way over native allotment parcels

- An inventory of RS 2477 trails compiled for assertion by DNR

Offered: 3/4/85
Referred: Transportation
and Finance

Original sponsors: Coghill, Abood,
Bennett, et al

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 10 (Resources) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Requesting that the Department of Natural Resources and the Department of Transportation and Public Facilities expedite the identification and establishment of rights-of-way for roads and trails on federal Bureau of Land Management plats which qualify under RS 2477.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the Alaska National Interest Lands Conservation Act of 1980 placed 124 million acres of land in Alaska into 71 federal conservation units, and outlined specific use requirements and restrictions for those units; and

Amendment

WHEREAS, ~~contrary to the provisions of the Alaska National Interest Lands Conservation Act of 1980~~, there was no provision for establishing or protecting a transportation system in the development of comprehensive management plans for each conservation unit by the responsible federal management agency; and

WHEREAS several of the comprehensive management plans have been completed without recognition of existing roads and trails, preventing public access through these units to state and private lands and to state waters; and

WHEREAS comprehensive management plans for a minimum of nine national park and preserve units and five fish and wildlife refuge units are to be completed during calendar year 1985; and

WHEREAS the federal statutory authority for the establishment of

recognized rights-of-way for roads and trails is contained in RS 2477 (43 U.S.C. sec. 932); and

WHEREAS the Department of Natural Resources and the Department of Transportation and Public Facilities on September 28, 1984, signed a Memorandum of Understanding with the federal Bureau of Land Management involving the northern region of Alaska only, establishing the procedure under which the rights-of-way could be recognized on Bureau of Land Management plats and in comprehensive plans for conservation units;

BE IT RESOLVED by the Alaska State Legislature that the Governor instruct the Department of Natural Resources and the Department of Transportation and Public Facilities immediately develop, in consultation with other affected land owners and managers, and propose a Memorandum of Understanding with the Bureau of Land Management relative to the remainder of the state; and be it

FURTHER RESOLVED that the Governor instruct the state agencies involved affirmatively solicit information from miners, engineers, land surveyors, environmentalists, outdoor groups, landholders, or other persons or organizations that may have knowledge of the historic use of roads and trails to assist the departments in the identification of those roads and trails that could qualify under the provisions of RS 2477 (43 U.S.C. sec. 932) for addition to the state transportation system, and that may be useful to the federal agencies developing comprehensive management plans for the various Alaska National Interest Lands Conservation units; and be it

FURTHER RESOLVED that the Governor instruct the involved state agencies develop draft policies regarding management, maintenance, liability, vacation, categories, widths, and other relevant concerns related to RS 2477 roads and trails, and that the agencies review these draft policies with affected landowners and managers, and then present these draft

policies to the legislature during the second session of the Fourteenth Alaska State Legislature.

COPIES of this resolution shall be sent to the Honorable Bill Sheffield, Governor of the State of Alaska, to the Honorable Esther Wunnicke, Commissioner of Natural Resources, to the Honorable Richard J. Knapp, Commissioner of Transportation and Public Facilities, and to Michael J. Penfold, State Director of the Bureau of Land Management.

Offered: 3/4/85
Referred: Transportation
and Finance

Original sponsors: Coghill, Abood,
Bennett, et al

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 10 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Requesting that the Department of Natural Resources and the Department of Transportation and Public Facilities expedite the identification and establishment of rights-of-way for roads and trails on federal Bureau of Land Management plats which qualify under RS 2477.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the Alaska National Interest Lands Conservation Act of 1980 placed 124 million acres of land in Alaska into 71 federal conservation units, and outlined specific use requirements and restrictions for those units; and

WHEREAS, contrary to the provisions of the Alaska National Interest Lands Conservation Act of 1980, there was no provision for establishing or protecting a transportation system in the development of comprehensive management plans for each conservation unit by the responsible federal management agency; and

WHEREAS several of the comprehensive management plans have been completed without recognition of existing roads and trails, preventing public access through these units to state and private lands and to state waters; and

WHEREAS comprehensive management plans for a minimum of nine national park and preserve units and five fish and wildlife refuge units are to be completed during calendar year 1985; and

WHEREAS the federal statutory authority for the establishment of

ADDED IN RESOURCES CSSJR10

recognized rights-of-way for roads and trails is contained in RS 2477 (43 U.S.C. sec. 932); and

WHEREAS the Department of Natural Resources and the Department of Transportation and Public Facilities on September 28, 1984, signed a Memorandum of Understanding with the federal Bureau of Land Management involving the northern region of Alaska only, establishing the procedure under which the rights-of-way could be recognized on Bureau of Land Management plats and in comprehensive plans for conservation units;

BE IT RESOLVED by the Alaska State Legislature that the Department of Natural Resources and the Department of Transportation and Public Facilities immediately develop, in consultation with other affected land owners and managers, and propose a Memorandum of Understanding with the Bureau of Land Management relative to the remainder of the state; and be it

FURTHER RESOLVED that the state agencies involved affirmatively solicit information from miners, engineers, land surveyors, environmentalists, outdoor groups, landholders, or other persons or organizations that may have knowledge of the historic use of roads and trails to assist the departments in the identification of those roads and trails that could qualify under the provisions of RS 2477 (43 U.S.C. sec. 932) for addition to the state transportation system, and that may be useful to the federal agencies developing comprehensive management plans for the various Alaska National Interest Lands Conservation units; and be it

FURTHER RESOLVED that the involved state agencies develop draft policies regarding management, maintenance, liability, vacation, categories, widths, and other relevant concerns related to RS 2477 roads and trails, and that the agencies review these draft policies with affected landowners and managers, and then present these draft policies to the legislature during the second session of the Fourteenth Alaska State Legislature.

COPIES of this resolution shall be sent to the Honorable Bill Shef-

field, Governor of the State of Alaska, to the Honorable Esther Wunnicke, Commissioner of Natural Resources, to the Honorable Richard J. Knapp, Commissioner of Transportation and Public Facilities, and to Michael J. Penfold, State Director of the Bureau of Land Management.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSSJR 10(Res

Title: RS 2477 Road and trail identification

Sponsor: Coghill, et al

Requestor: Senate Finance

Date of Request: 4/18/85

FISCAL DETAIL

Agency Affected: DNR, DOTPF

Program Category Affected: Management of Land & Water Resource

BRU, Program or Subprogram(s) Affected: Land & Water Public Use

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		46.0				
200 TRAVEL		4.0				
300 CONTRACTUAL		42.0				
400 SUPPLIES		1.0				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		93.0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		93.0				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See committee Letter of Intent

Prepared By: Jan Faiks, Co-chairman Senate Finance Committee

Phone: 465-4523

Division:

Date: 4/18/85

Approved by Commissioner:

Date:

Agency:

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Alaska State Legislature

Senate

Committee on Finance

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

LETTER OF INTENT
CS for SJR 10 (RESOURCES)

Requesting that the Dept. of Natural Resources and Dept. of Transportation expedite identification and establishment of rights-of-way for roads and trails.

It is the intent of the committee that the Dept. of Natural Resources contract and work with the appropriate department in the University of Alaska system to accomplish this task.

Jan Faiks, Co-chairman
Senate Finance Committee

STATEMENT ON

SJR 10 (RS 2477 Rights of Way)

By Senator John B. Coghill

Senate Resources Committee - February 22, 1985

Thank you, Madam Chair, for the opportunity to present a few brief comments on an issue of vital importance not only to my district, but to all of Alaska - the salvaging of rights-of-way established under the federal RS 2477 provision. I appreciate your committee's willingness to examine this issue and to, I hope, take prompt action on it.

Prompt action is our mandate in this issue, because as we see with each passing day, the access potential created by our pioneering forebears when they struck out over those roads and trails into the heartland of Alaska - that access so essential to continued progress in Alaska - is quickly being bureaucratically removed from our grasp by those who would lock up Alaska. Over the next two years we will see the formation of dozens of state and federal land use plans, all of which must acknowledge the validity of the RS 2477 rights-of-way within the areas they cover or those rights-of-way will likely be gone forever.

Alaskans need those rights-of way. I think Congress knew what it was doing - back then - when it made provision for us to have access across federal lands. It is regrettable that we must now take this kind of virtually desperate action - to insist that the state and federal government enter into a cooperative agreement - to protect what is already ours and keep these rights-of-way on the books.

Thank you again, Madam Chair, for this committee's time spent on this issue. I hope the members will act favorably on SJR 10.

PRIME SPONSOR'S STATEMENT

Citizens' Advisory Commission on Federal Areas

515 Seventh Avenue
Suite 310
Fairbanks, Alaska 99701
(907) 456-2012

TO: ALASKA LAND USE COUNCIL MEMBERS

FROM: CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

RE: RS 2477 RIGHTS-OF-WAY

DATE: SEPTEMBER 13, 1984

In 1866 the U.S. Congress passed a law entitled "An Act granting the right of way to Ditch and Canal Owners over the Public Lands, and for other Purposes." Section 8 of this act, which generally dealt with mining activities on the public lands, read as follows: "And be it further enacted, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

This grant, more commonly known as Revised Statute (RS) 2477 (43 USC §932), was a standing offer by the Federal government until it was repealed with the passage of the Federal Land Policy and Management Act (FLPMA) of 1976. While RS 2477 is no longer the legal basis for the construction of new public highways, valid existing rights granted to the Territory, State and public of Alaska during the period of the act's efficacy are protected by FLPMA Section 701 and reaffirmed by ANILCA Section 1109.

There are perhaps 150 or more RS 2477 rights of way in Alaska, concentrated primarily in the interior, which were accepted directly by the public of the State and the Territory through actual construction and use. This is exclusive of the Section-line right of way dedicated by the State in AS 19.10.010. which legislation acts as formal acceptance of the grant offered. Informal acceptance, that which is accepted directly by the public through actual use, is an equally valid right recognized in case law on the subject.

On State owned lands, authority for the management of these public rights of way is vested in both the Department of Natural Resources (DNR) and the Department of Transportation and Public Facilities (DOT/PF). On Federal and private lands, DOT/PF has primary authority as the managing agency. This authority would extend to those ANILCA lands which were vacant and unreserved public lands during the period of time when the grant was in effect in the Territory and State. The Alaska Organic Act of 1884 was the legislation which brought United States law to Alaska, including RS 2477, and can be regarded as the date at which the grant became effective in the Territory.

In 1923 the Territorial legislature formally accepted the grant by dedicating all Section lines to be public highways with an

easement of either 66 feet or 100 feet depending on the land status at the time of the dedication. Informal acceptance of the grant has occurred every time men cut their way through the wilderness during the gold rush in effect constructing public highways for all to use. Many years of use by succeeding fortune seekers, trappers, traders, subsistence users and recreationists along these routes has reinforced this legacy. Once granted and accepted, the vacant, unreserved public lands over which the right of way lies are severed from ownership by the federal government and pass to the Territory, the State or the public of those political entities.

The Alaska National Interest Lands Conservation Act (ANILCA) mandated the preparation of management plans for the lands added to the Conservation System Units (CSUs) created by that act. Unfortunately, both the Federal and State agencies have for the most part not adequately considered these public highways in the planning efforts now underway. Failure to confront the issue of RS 2477 has and will continue to do harm to the interests of the State, the Federal government and the Alaskan public.

Recently, a miner was arrested by Park Service personnel within the bounds of the Yukon-Charley National Preserve while moving a bulldozer along the Bulenberg Trail which both he and State officials claim is a valid RS 2477 right of way. The miner has patented and unpatented mining claims in the National Preserve to which he is guaranteed access by Section 1110 of ANILCA. These "guarantees" are honored by requiring miners and other traditional users of the lands in question to contend with considerable amounts of paperwork to receive permits providing access to these lands. This Commission believes that this system of permitting is contrary to the spirit and the letter of the law where legitimate RS 2477s are involved. Formal recognition of valid RS 2477 rights of way by the various Federal agencies would simplify the problem of access and allow the use of a transportation system that has been in existence for over eighty years. The use of valid rights of way belonging to the State of Alaska should not be subject to the issuance of permits by Federal land managers.

This is clearly the intent of the Congress as evidenced by the report of the Senate Energy and Natural Resources Committee (Report #96-413; November 14, 1979; page 303): "Those private lands, and those lands owned by the State of Alaska or a subordinate political entity, are not to be construed as subject to the management regulations which may be adopted to manage and administer any national conservation system unit which is adjacent to, or surrounds, the private or non-federal public lands. Federal laws and regulations of general applicability to both private and public lands, such as the Clean Air Act, the Water Pollution Control Act, U.S. Army Corps of Engineers wetlands regulations, and other Federal statutes and regulations of general applicability would be applicable to

private or non-federal public land inholdings within the conservation system units, and to such lands adjacent to conservation system units, and are thus unaffected by the passage of this bill."

The State officials responsible for asserting the State's claims and managing these rights of way on behalf of the Alaskan public have been reluctant to do so. Perhaps this is due to a desire to de-polemicize the relations between the State and Federal governments since the passage of ANILCA. However, an absence of both a clear policy and the political will to follow through on such a policy is tantamount to a "de facto" abandonment of these rights of way. This Commission is implacable in its opposition to such an abandonment.

The Yukon-Charley National Preserve case involves more than the issue of access by RS 2477 and will be settled in a court of law. One thing is clear however, according to personnel in both the Alaska Department of Transportation and the Department of Natural Resources, the trail used in this instance is a valid, documented RS 2477.

The Citizens' Advisory Commission on Federal Areas proposes the formation of a work group or task force which will establish a procedure to confirm the State's RS 2477 claims. The Commission requests that the member agencies of the ALUC cooperate fully in the implementation of this proposal. Such cooperation would include agency acknowledgement of identified RS 2477 rights of way in the planning efforts of the CSUs, as well as adequate personnel and funding for the necessary research.

The Commission recommends that the Alaska Department of Transportation and Public Facilities and the Department of Natural Resources act as the co-lead agencies on behalf of the State in the task force. We recommend the Bureau of Land Management as the lead agency for the Federal government.

This matter is in urgent need of attention. Access to legitimate inholdings on the CSUs is not being adequately addressed despite the guarantees of ANILCA Section 1110. In the absence of a clear initiative on the part of the State, there is little the land management agencies of the Federal government are able or willing to do on the issue of RS 2477 while plans for the CSUs are being prepared. Timely action by the appropriate State agencies is necessary to ensure federal and private recognition of RS 2477 rights of way.

The Citizens' Advisory Commission on Federal Areas believes the ALUC is the proper channel through which this problem may be addressed. Formation of an intergovernmental task force will clear up some of the unanswered questions faced by private and public land managers.

BRIEFING PAPER

Alaska Department of Transportation and Public Facilities

Northern Region

Division of Planning

REVISED STATUTE 2477 RIGHTS-OF-WAY

Legal Basis for RS 2477

Congress by the Act of July 26, 1866 granted rights-of-way for highways over unreserved public lands, and by doing so, established an extensive network of public rights-of-way in Alaska. This Act, now codified as 43 U.S.C. 932, Revised Statute (RS) 2477, states in full:

> "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 October 21, 1976 by Public Law 94-579, section 706 (90 stat. 2793), those rights-of-way previously established remain valid.

Geographic and Historical Development

In Alaska, RS 2477 rights-of-way are concentrated mainly in the Interior, Western and Southwestern regions of the state and in the Copper River basin. In Southeastern and along the Southcentral gulf coast, RS 2477 was not as important to transportation because of the accessibility via water.

RS 2477 highways 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 appearing on U.S.G.S. topographic maps are RS 2477 highways.

Since the RS 2477 statute 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" 118 years ago when the law was passed differs greatly from the modern concept. Further, a procedure for identifying and claiming rights-of-way was not established.

At this time, there is confusion and differences of opinion regarding the location, validity and extent of RS 2477 highways in Alaska. Although RS 2477 highways exist in several states, this issue has taken on special significance in Alaska because of the remoteness and inaccessibility of much of the state.

Additionally, the Alaska Statehood Act, the Alaska Native Claims Settlement Act (ANCSA), and the Alaska National Interests 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, there is a diversity of views regarding access and land management policies. 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. Furthermore, as land is conveyed, the validity of RS 2477's is being questioned. Currently, in land conveyance documents, RS 2477 rights-of-way are protected only with the clause, "valid existing rights," with no visible evidence of them on the Federal or State land status plats. The existing Trail Inventory File, which catalogs many RS 2477 roads, is at a scale of 1:250,000 (standard U.S.G.S quad map) and does not show the the location of RS 2477's in sufficient detail to allow them to be entered on the land status plats.

Need for Procedures

Confusion among State and Federal agencies and private landowners as to the implementation of RS 2477 continues to hinder management and use of these highways. It has become apparent that the public requires assistance in identifying RS 2477 roads. 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.

For rights-of-way, land selection, land claims and other land transfer actions, land status plats serve as part of offical records of land ownership for both the Federal government (through BLM) and the State government (through DNR). It is in the State's and the public's interest to establish these RS 2477 claims on both State and Federal land status plats, thereby asserting the RS 2477 claim and identifying its location. Placing the roads on the 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 much more viable than simply a "valid existing rights" clause in a conveyance document. The location of each trail would be generally established, therefore it would be obvious to anyone researching land status that a right-of-way claim exists across a particular parcel.

If the State documents its claims, other parties are put in the position of challenging the State's claim rather than vice versa. Presently, the State would have to prove "valid existing rights," on conveyed land. If the trails were already on the status plats, anyone who disareed would be in the position of challenging the State's claim. Asserting an RS 2477 claim in this manner is only an administrative determination since BLM does not adjudicate RS 2477 claims. If someone were to challenge the State, the State's claim would still have to be proven in court; however, we certainly would be in a much better position to do this.

Other Findings

Discussions with DNR personnel in Anchorage who had been investigating regulations and court decisions relating to RS 2477's revealed the following points:

1) It appears that the definition of what constitutes a "highway" (which is the term used in the statute), is a matter for each state to determine. In Alaska, AS 19.45.001(8) defines a highway as that which "...includes a highway (whether in the primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure an other similar or related structure or facility, and right-of-way thereof..."

2) DOT&PF has management authority on RS 2477 where they occur on non-state land. Where RS 2477's occur on state land, DOT&PF has concurrent authority with the state agency having management authority over the land (usually DNR).

3) The courts have held that acceptance of an RS 2477 does not "impose on the public authority the duty to maintain." Therefore, a perfectly valid management decision might be to provide little maintenance or not to maintain a particular trail at all. Additionally, lack of maintenance over the years does not imply abandonment.

4) There are contradicting legal opinions regarding use restrictions, right-of-way vacations, and the role of a local government (ie. boroughs) in the management of RS 2477's.

Task Force on RS 2477

This issue was discussed at the Annual Meeting between the Bureau of Land and Regional Management (BLM) Fairbanks District Office and DOT&PF Northern Region on April 27, 1984. At that meeting it was decided to form a regional "task force" to discuss the situation. The Alaska Department of Natural Resources (DNR) was invited to join.

The Task Force on RS 2477 rights-of-way held its first meeting June 15, 1984. BLM, DNR and DOT&PF were present. The meeting established guidelines and procedures for asserting RS 2477 claims and having them established on the land status plats. The procedure is as follows:

1) A claim can be asserted by the State or any private individual.
2) A cover letter asserting a claim or accepting an RS 2477 grant must be submitted along with documentation suporting the date claimed. The date should preferably be based on expenditure of funds (public or private) or the earliest known date of public use. (An individual's time in constructing a road could be "translated" into funds).
3) A map at a scale no smaller than 1:63,360 depicting the route must be submitted with the supporting documentation and cover letter.
4) The trail number and quad number from the existing Trail Inventory File should be noted (if applicable) for clarification and cross-reference.
5) BLM will review each claim to verify that the land was "unreserved public land" as of the date claimed.
6) BLM will issue a serial number and establish a case file for each claim, as will DNR and DOT&PF. All correspondence should reference these numbers.
7) BLM will plot each trail claimed on their Master Title Plats and DNR will plot each one on the State's land status plats.
8) In order to prevent confusion, either DNR or DOT&PF will have the responsibility of submitting all necessary information to BLM.
9) All files, including maps, supporting data, etc., established by one agency should be duplicated and forwarded to the other agencies.

RS 2477 Coordination Committee for Northern Alaska

To provide a orderly manner for claiming RS 2477's and to avoid duplication of effort, the Task Force has suggested establishing an "RS 2477 Coordination Committee for Northern Alaska." This committee would consist of representatives from BLM, DNR and DOT&PF. Its purpose would be to coordinate and

prioritize efforts on asserting RS 2477 claims, to discuss any areas of disagreement and to keep each agency informed on the other agencies' efforts.

RS 2477 Management Review Board for Northern Alaska

Regarding the management of these roads, the Task Force has recommended establishing an "RS 2477 Management Review Board for Northern Alaska." This board would provide a forum to discuss differences relating to the management of RS 2477's. Problems which have come up in the past such as use restrictions, requests to vacate, and alignment, will continue. With contradicting legal opinions, an inter-agency forum for handling these issues would benefit all concerned and provide a multi-agency response to problems. Discussions could lead to possible solutions. Recommendation passed by this board would show a concerted effort by all agencies involved to provide thoughtful management actions. This would also provide one agency with the means to seek additional support in making a management decision. Additionally, any decision would be the result of the actions of several agencies rather than the decision of just one. DOT&PF as manager or co-manager of these roads would have veto power over any board recommendation.

Composition of this board would consist of two members from BLM, DNR and DOT&PF, with one member from the Citizens' Advisory Commission on Federal Areas and one invited member from a related professional organization (i.e., an officer of the International Right-of-Way Association). Temporary membership could be extended to governmental land managing agencies affected by matters under discussion and to private land owners affected. The board would meet as needed at the request of any board members.

Memorandum of Agreement

To implement the Task Force recommendations, a preliminary Memorandum of Understanding (MOU) between BLM, DNR and DOT&PF has been drafted. At this time, the MOU would exist only between BLM's Fairbanks District Office, DNR's Northcentral District, and DOT&PF's Northern Region. Northern and Interior Alaska is most affected by RS 2477 roads. Since the Fairbanks offices of these agencies have begun efforts, and established a precedent with the Bulenberg Trail, it was felt that an MOU at the District/Regional level would serve as a "testing area" for this procedure. Also, the archives of the University of Alaska-Fairbanks are the largest in the state, making Fairbanks better suited for the historcial research. Should this procedure succeed (as we are confident it will) then this MOU, or one similar, could be extended to other regions. A copy of the draft MOU is attached.

The participating agencies are in agreement that an effort such as this seems long overdue. It has the enthusiastic support of the BLM Fairbanks District Manager, Carl Johnson, who will be presenting this issue and the MOU concept to the BLM Advisory Council meeting on August 15, 1984 and to the Haul Road Meeting on August 23, 1984. It also has the support of the DNR Northcentral District Manager, Division of Land and Water Management, Jerry Brossia.

Program Needs

In order to complete this project, a commitment by DOT&PF and the other agencies is necessary. The prioritization and assertion of RS 2477 roads would be an ongoing process over several years (estimated 5 years for 100-150 trails). Historical research, personal interviews and preparation of maps are the

specific tasks needed for asserting the claims and having them plotted on land status plats. A rough estimate indicates that this effort would require approximately $100,000 per year which would provide for the research of 20 - 25 trails per year. This estimate is based on the time and effort actually spent for the Bulenberg Trail acquisition.

In order to accomplish this, there are a number of alternatives for DOT&PF to consider.

1) Funding Sources

a) A current source of capital money is in the Bulenberg Trail Aquisition project which has $95,000 remaining. This money was appropriated by the State Legislature for the purpose of aquiring the right-of-way of the Bulenberg Trail. DNR researched historical data and interviewed several people and asserted an RS 2477 claim. Since the right-of-way was secured in this manner (by DNR) most of the existing DOT&PF funds remains unspent. However, legislative action would be necessary to enable us to use the money on other trail acquisitions.

b) An item could be included in the FY 86 CIP Submittal which would change the existing Bulenberg Trail legislation and appropriate additional funds.

c) The RS 2477 activities could be included in the FY 86 DOT&PF operating budget as contractual and/or personal services.

2) Organization/Staffing

a) Should in-house staff be used, this project could be handled by either Planning, Right-of-Way or Special Projects. The decision of which group(s) to use would depend upon the manpower available and the funding levels of each section.

b) An alternative is to contract this project out to an independent firm which would prepare maps and research historical data for our use. This would require project management within DOT&PF.

c) Another alternative is a cooperative agreement with the University of Alaska-Fairbanks, using a Reimbursable Services Agreement (RSA). A university student could research historical data and provide the map(s) for the trails. This alternative has the advantage that DOT&PF would have more direct control over the person(s) doing the work. In addition this would probably be the least expensive alternative. Since this work is not so much difficult as it is time consuming, this project would be ideal for a student.

Recommendations

The MOU between BLM, DNR and DOT&PF should be reviewed and signed so this project may begin in a timely manner. First it must be decided whether

DNR or DOT&PF shall have the responsiblity to submit the supporting documentation to BLM.

We recommend that DOT&PF seek a revisied program change from the interim legislative committees to use the Bulenberg Trail appropriation for RS 2477 right-of-way acquisition. This amount could be used for the first year's work, beginning in FY 85.

Further, we recommend that an agreement with the University of Alaska-Fairbanks be entered into to establish a cooperative arrangement with a graduate level student(s) to research the historcial data for the trails and possibly to provide the maps needed.

The Coordination Committee should be appointed and meet promptly to establish the "first priority" trails so that the first efforts will begin with interagency cooperation.

Adequate funds should be budgeted in the FY 86 Capital and Operating Budgets to continue this activity.

DP:dp

easement of either 66 feet or 100 feet depending on the land status at the time of the dedication. Informal acceptance of the grant has occurred every time men cut their way through the wilderness during the gold rush in effect constructing public highways for all to use. Many years of use by succeeding fortune seekers, trappers, traders, subsistence users and recreationists along these routes has reinforced this legacy. Once granted and accepted, the vacant, unreserved public lands over which the right of way lies are severed from ownership by the federal government and pass to the Territory, the State or the public of those political entities.

The Alaska National Interest Lands Conservation Act (ANILCA) mandated the preparation of management plans for the lands added to the Conservation System Units (CSUs) created by that act. Unfortunately, both the Federal and State agencies have for the most part not adequately considered these public highways in the planning efforts now under . Failure to confront the issue of RS 2477 has and will continue to do harm to the interests of the State, the Federal government and the Alaskan public.

Recently, a miner was arrested by Park Service personnel within the bounds of the Yukon-Charley National Preserve while moving a bulldozer along the Bulenberg Trail which both he and State officials claim is a valid RS 2477 right of way. The miner has patented and unpatented mining claims in the National Preserve to which he is guaranteed access by Section 1110 of ANILCA. These "guarantees" are honored by requiring miners and other traditional users of the lands in question to contend with considerable amounts of paperwork to receive permits providing access to these lands. This Commission believes that this system of permitting is contrary to the spirit and the letter of the law where legitimate RS 2477s are involved. Formal recognition of valid RS 2477 rights of way by the various Federal agencies would simplify the problem of access and allow the use of a transportation system that has been in existence for over eighty years. The use of valid rights of way belonging to the State of Alaska should not be subject to the issuance of permits by Federal land managers.

This is clearly the intent of the Congress as evidenced by the report of the Senate Energy and Natural Resources Committee (Report #96-413; November 14, 1979; page 303): "Those private lands, and those lands owned by the State of Alaska or a subordinate political entity, are not to be construed as subject to the management regulations which may be adopted to manage and administer any national conservation system unit which is adjacent to, or surrounds, the private or non-federal public lands. Federal laws and regulations of general applicability to both private and public lands, such as the Clean Air Act, the Water Pollution Control Act, U.S. Army Corps of Engineers wetlands regulations, and other Federal statutes and regulations of general applicability would be applicable to

easement of either 66 feet or 100 feet depending on the land status at the time of the dedication. Informal acceptance of the grant has occurred every time men cut their way through the wilderness during the gold rush in effect constructing public highways for all to use. Many years of use by succeeding fortune seekers, trappers, traders, subsistence users and recreationists along these routes has reinforced this legacy. Once granted and accepted, the vacant, unreserved public lands over which the right of way lies are severed from ownership by the federal government and pass to the Territory, the State or the public of those political entities.

The Alaska National Interest Lands Conservation Act (ANILCA) mandated the preparation of management plans for the lands added to the Conservation System Units (CSUs) created by that act. Unfortunately, both the Federal and State agencies have for the most part not adequately considered these public highways in the planning efforts now underway. Failure to confront the issue of RS 2477 has and will continue to do harm to the interests of the State, the Federal government and the Alaskan public.

Recently, a miner was arrested by Park Service personnel within the bounds of the Yukon-Charley National Preserve while moving a bulldozer along the Bulenberg Trail which both he and State officials claim is a valid RS 2477 right of way. The miner has patented and unpatented mining claims in the National Preserve to which he is guaranteed access by Section 1110 of ANILCA. These "guarantees" are honored by requiring miners and other traditional users of the lands in question to contend with considerable amounts of paperwork to receive permits providing access to these lands. This Commission believes that this system of permitting is contrary to the spirit and the letter of the law where legitimate RS 2477s are involved. Formal recognition of valid RS 2477 rights of way by the various Federal agencies would simplify the problem of access and allow the use of a transportation system that has been in existence for over eighty years. The use of valid rights of way belonging to the State of Alaska should not be subject to the issuance of permits by Federal land managers.

This is clearly the intent of the Congress as evidenced by the report of the Senate Energy and Natural Resources Committee (Report #96-413; November 14, 1979; page 303): "Those private lands, and those lands owned by the State of Alaska or a subordinate political entity, are not to be construed as subject to the management regulations which may be adopted to manage and administer any national conservation system unit which is adjacent to, or surrounds, the private or non-federal public lands. Federal laws and regulations of general applicability to both private and public lands, such as the Clean Air Act, the Water Pollution Control Act, U.S. Army Corps of Engineers wetlands regulations, and other Federal statutes and regulations of general applicability would be applicable to

private or non-federal public land inholdings within the conservation system units, and to such lands adjacent to conservation system units, and are thus unaffected by the passage of this bill."

The State officials responsible for asserting the State's claims and managing these rights of way on behalf of the Alaskan public have been reluctant to do so. Perhaps this is due to a desire to de-polemicize the relations between the State and Federal governments since the passage of ANILCA. However, an absence of both a clear policy and the political will to follow through on such a policy is tantamount to a "de facto" abandonment of these rights of way. This Commission is implacable in its opposition to such an abandonment.

The Yukon-Charley National Preserve case involves more than the issue of access by RS 2477 and will be settled in a court of law. One thing is clear however, according to personnel in both the Alaska Department of Transportation and the Department of Natural Resources, the trail used in this instance is a valid, documented RS 2477.

The Citizens' Advisory Commission on Federal Areas proposes the formation of a work group or task force which will establish a procedure to confirm the State's RS 2477 claims. The Commission requests that the member agencies of the ALUC cooperate fully in the implementation of this proposal. Such cooperation would include agency acknowledgement of identified RS 2477 rights of way in the planning efforts of the CSUs, as well as adequate personnel and funding for the necessary research.

The Commission recommends that the Alaska Department of Transportation and Public Facilities and the Department of Natural Resources act as the co-lead agencies on behalf of the State in the task force. We recommend the Bureau of Land Management as the lead agency for the Federal government.

This matter is in urgent need of attention. Access to legitimate inholdings on the CSUs is not being adequately addressed despite the guarantees of ANILCA Section 1110. In the absence of a clear initiative on the part of the State, there is little the land management agencies of the Federal government are able or willing to do on the issue of RS 2477 while plans for the CSUs are being prepared. Timely action by the appropriate State agencies is necessary to ensure federal and private recognition of RS 2477 rights of way.

The Citizens' Advisory Commission on Federal Areas believes the ALUC is the proper channel through which this problem may be addressed. Formation of an intergovernmental task force will clear up some of the unanswered questions faced by private and public land managers.

RESOLUTION #2-185

RESOLUTION PERTAINING TO ESTABLISHMENT OF RS 2477 RIGHTS-OF-WAY

WHEREAS, the development and production of natural resources in Interior Alaska is a significant element in the economic base of the Fairbanks community and the welefare of its inhabitants; and

WHEREAS, expansion of resource production is dependent on adequate access to areas in which resources are located; and

WHEREAS, access to a number of resource areas in Interior Alaska may become possible by the use of routes established in the past and which are included in the inventory of trails owned by the State of Alaska as asserted by Memorandum 00-2528, April 8, 1974, to the U.S. Bureau of Land Management; and

WHEREAS, the procedures for the assertion of RS 2477 Rights-of-Way by the State of Alaska has been established in a Memorandum of Understanding between the Alaska Department of Natural Resources (DNR), and the Alaska Department of Transportation and Public Facilities (DOTPF, and Bureau of Land Management (BLM), September 28, 1984, promulgated by the interior regional offices of these three agencies; and

WHEREAS, a coordinating committee comprising a representative of each agency (John Martin, DOTPF; Joseph Sullivan, DNR; Dwight Hempel, BLM) has been established; and

WHEREAS, the historical research, documentation and mapping required for the routes already inventoried and identification of trails not previously inventoried will require a significant effort and John Martin, DOTPF, and Joseph Sullivan, DNR, are investigating the manpower and funding requirements to accomplish this effort.

NOW THEREFORE, be it resolved by the Greater Fairbanks Chamber of Commerce that the implementation of RS 2477 Memorandum of Understanding dated September 28, 1984, AK-023-MU5-002, be strongly supported; and

BE IT FURTHER RESOLVED, that the State Legislature encourage this project by supporting adequate budget and/or priority assignment of personnel in DOTPF and DNR and similar support by given by the Federal Government to BLM; and

BE IT FURTHER RESOLVED, to encourage all organizations and individuals to develop and submit to DOTPF and DNR a list of priority routes known to them in Interior Alaska which will be of maximum benefit for mineral, agricultural, commercial and recreation and that routes which can support more than one of the above be given particular emphasis; and

BE IT FURTHER RESOLVED; that full consideration be given to the corridor concept, alternate established routes and to existing land rights of others, including private owners and the national interest lands, in identifying RS 2477 Rights-of-Ways; and

BE IT FURTHER RESOLVED, that copies of this Resolution be forwarded to:

FAIRBANKS C OF C RESOLUTION

Governor of Alaska
Commissioner, Department of Natural Resources, Alaska
Commissioner, Department of Transportation and Public Facilities, Alaska
President of the Senate, Alaska Legislature
Resources and Transportation Committees of the House, Alaska Legislature
Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Secretary of the Interior
Director, Bureau of Land Management, Washington D.C.
Alaska State Director, Bureau of Land Management, Anchorage, Alaska
Director, Northern Region, Bureau of Land Management, Fairbanks, Alaska

DATED THIS 14TH DAY OF JANUARY, 1985.

GREATER FAIRBANKS CHAMBER OF COMMERCE BOARD OF DIRECTORS

By Buck Wright

Title President and Chief Executive Officer

Attachments: Memorandum 00-2128, April 8, 1974
Memorandum AK-023-MU5-002, September 28, 1984

Citizens' Advisory Commission on Federal Areas

515 Seventh Avenue
Suite 310
Fairbanks, Alaska 99701
(907) 456-2012

February 26, 1985

Honorable Bill Sheffield
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Re: RS 2477 Rights-of-Way

Dear Governor Sheffield:

You will recall that the Citizens' Advisory Commission on Federal Areas in September proposed formation of a task force sanctioned by the Alaska Land Use Council (ALUC) which would establish a procedure for confirming the State of Alaska's claims to RS 2477 rights-of-way. Our specific proposal was withdrawn when Bureau of Land Management (BLM) State Director Mike Penfold revealed that the Department of Natural Resources (DNR), the Department of Transportation and Public Facilities (DOTPF) and the BLM were negotiating a Memorandum of Understanding (MOU) for the implementation of a procedure similar to the one we were proposing. The MOU was signed September 28, 1984.

Our proposal advised that a necessary element in the success of such an undertaking would be the cooperation of the member agencies of the ALUC in the implementation of any procedure developed. Such cooperation would include adequate funding and manpower for the research needed. At this time we must advise you that it is necessary that adequate funds be allocated to permit the State agencies involved, DNR and DOTPF, to meet their objective of identifying and confirming RS 2477 rights-of-way.

Management authority for RS 2477 rights-of-way which cross non-State lands is vested with the Alaska DOTPF. We recognize that there are legitimate management concerns espoused by Federal land managers, Native and other private landowners and environmental groups. Adequate opportunities for interested parties to plan for State management of these rights-of-way exist and can be expanded if necessary, but only if the State retains its present authority to do so.

You are no doubt aware of the rigorous permitting process that Title XI of ANILCA requires prior to construction of a Transportation and Utilities System (TUS) on or across a Conservation System Unit (CSU). Most knowledgeable people in and out of the State government regard this process as extremely difficult, if not completely unworkable. Because of the difficulties inherent

CITIZEN'S ADVISORY COMMISSION 2-26-85

in the Title XI process, it is critical that the management authority over, and State ownership of, RS 2477 rights-of-way be adequately recognized in the CSU planning efforts of federal agencies. Language recently adopted by the National Park Service (NPS) for inclusion in the General Management Plans that agency is preparing illustrates this:

> "The Park Service is aware the State might assert certain claims of rights-of-way under R.S. 2477. The Service intends to cooperate with the State (and any other claimant) in identifying these claims, the nature, extent and validity of which may vary depending on the circumstances under which they were acquired or asserted. Notwithstanding that certain R.S. 2477 rights-of-way may exist, it will still be necessary for users of any right-of-way to comply with applicable Park Service requirements." (emphasis added)

This is so despite the assurances of ANILCA Section 1109 which states:

> "Nothing in this title shall be construed to adversely affect any valid existing right of access."

We are painfully aware of the decline in State revenues and the necessity to minimize unessential expenditures. We are also aware that the economy of the State of Alaska is overly dependent upon the oil industry. The need to develop our resources in a rational manner to diversify our economy is more evident every day. The timber, mineral and tourist industries of the State must have access in order to expand. The rights-of-way granted the State through RS 2477 can play a vital role in this effort both as an alternative to Title XI and as leverage in securing more favorable decisions in Title XI and other resource management issues on federal lands.

We believe that it is of the utmost importance that the State of Alaska's ownership and management of these public rights-of-way be forcefully defended. By doing so, we can go a long way towards ensuring that debate over proposals to cross a CSU with a transportation system is managed here in Alaska rather than in Washington, D.C. As governor of our State, your support is necessary for the success of this endeavor.

Senate Joint Resolution #10 (SJR #10), sponsored by a bipartisan group of legislators, requests that DOTPF and DNR expedite the identification and establishment of rights-of-way for roads and trails on federal BLM plats which qualify under RS 2477. The Resolution also calls for the expansion of the current MOU, which presently applies only to the Interior region, into a statewide process. We endorse this resolution and urgently request that you give it your strongest support as well.

We also ask that you use the power of your office to insure that DOTPF and DNR receive adequate funding to implement an effective course of action pursuant to the objectives of SJR #10.

We reiterate our earlier acknowledgement that legitimate concerns by federal land managers, Native land owners and environmental groups exist. But these concerns over the management of RS 2477 rights-of-way are separate from the issue of ownership, and are more properly accommodated in the State transportation planning process. To allow management concerns to interfere with confirming ownership of the rights-of-way is to put the cart before the horse; it is analogous to requiring an "acceptable" land use plan to be in place before the State or the Native corporations can be issued a land conveyance.

We hope you will consider these points and see the interests of the State require positive action to preserve the full range of State prerogatives.

Sincerely,

Phil R. Holdsworth

Phil R. Holdsworth
Chairman

cc: E. Wunnicke
R. Knapp

Citizens' Advisory Commission on Federal Areas

515 Seventh Avenue
Suite 310
Fairbanks, Alaska 99701
(907) 456-2012

March 1, 1985

SJR 10

MAR 5 1985

Representative Bette Cato
Pouch V
Juneau, Alaska 99811

Dear Representative Cato:

The Citizens' Advisory Commission on Federal Areas is concerned about the lack of recognition of Revised Statute (RS) 2477 rights-of-way in the Conservation System Unit (CSU) planning efforts of federal agencies. Development of land management plans which recognize valid existing rights-of-way under RS 2477 or other applicable laws benefits not only the State but the federal agencies and private inholders within CSU's as well. Recognition would facilitate the evaluation of access and transportation needs for a variety of activities.

On February 16th, the Commission approved several recommendations on RS 2477 including one endorsing adoption of Senate Joint Resolution (SJR) #10. Proposed by a bipartisan group of legislators, SJR #10 urges the Department of Transportation and Public Facilities and the Department of Natural Resources to expedite identification of RS 2477 rights-of-way pursuant to a Memorandum of Understanding developed by those agencies and the Bureau of Land Management.

We are convinced that this issue is critical to the future well being of the State. While recognizing that there are legitimate concerns espoused by private landowners, environmental groups and federal agencies regarding the management of RS 2477's, we nonetheless view management and ownership as separate issues. Opportunities exist for interested groups to participate in the planning for management of rights-of-way and can be expanded if necessary to accommodate their concerns. Ownership of an RS 2477 is not dependent upon a particular management strategy, to insist that it should be is analogous to requiring a declaration of management intent on the part of the State or a Native corporation prior to conveyance of its land entitlement.

We urge you to support SJR #10 and to assist DNR and DOTPF through the budgetary process in their effort to identify and document the existence of RS 2477 rights-of-way.

Sincerely,

Stan Leaphart

Stan Leaphart
Executive Director

ASCC

ALASKA STATE CHAMBER OF COMMERCE
310 Second Street
Juneau, Alaska 99801
(907) 586 2323

April 24, 1985

APR 25 1985

Representative Bette Cato
Pouch V
Juneau, Alaska 99811

Dear Bette:

Enclosed is a resolution adopted by the State Chamber's Board of Directors regarding Establishment of RS 2477 Rights-of-Way.

Your support of this critical issue is greatly appreciated.

Cordially,

George Krus
President

GK/rb

Enclosure

ALASKA STATE CHAMBER OF COMMERCE

RESOLUTION PERTAINING TO ESTABLISHMENT OF RS 2477 RIGHTS-OF-WAY

WHEREAS, the development and production of natural resources in Alaska is a significant element in the economic base of the State of Alaska and the welfare of its inhabitants; and

WHEREAS, expansion of resource production is dependent on adequate access to areas in which resources are located; and

WHEREAS, access to a number of resource areas in Alaska may become possible by the use of routes established in the past and which are included in the inventory of trails owned by the State of Alaska as asserted by Memorandum 00-2528, April 8, 1984, to the U.S. Bureau of Land Management; and

WHEREAS, the procedures for the assertion of RS 2477 Rights-of-Way by the State of Alaska has been established in a Memorandum of Understanding between the Alaska Department of Natural Resources (DNR), and the Alaska Department of Transportation and Public Facilities (DOT/PF), and Bureau of Land Management (BLM), September 28, 1984, promulgated by the interior regional offices of these three agencies; and

WHEREAS, a coordinating committee comprising a representative of each agency (John Martin, DOT/PF; Joseph Sullivan, DNR: Dwight Hempel, BLM) has been established; and

WHEREAS, the historical research, documentation and mapping required for the routes already inventoried and identification of trails not previously inventoried will require a significant effort and John Martin, DOT/PF, and Joseph Sullivan, DNR, are investigating the manpower and funding requirements to accomplish this effort.

NOW THEREFORE, be it resolved by the Alaska State Chamber of Commerce that the implementation of RS 2477 Memorandum of Understanding dated September 28, 1984, AK-023-MU5-002, be strongly supported; and

BE IT FURTHER RESOLVED, that the State Legislature encourage this project by supporting adequate budget and/or priority assignment of personnel in DOT/PF and DNR and similar support by given by the Federal Government to BLM; and

BE IT FURTHER RESOLVED, to encourage all organizations and individuals to develop and submit to DOT/PF and DNR a list of priority routes known to them in Alaska which will be of maximum benefit for mineral, agricultural, commercial and recreation and that routes which can support more than one of the above be given particular emphasis; and

BE IT FURTHER RESOLVED; that full consideration be given to the corridor concept, alternate established routes and to existing land rights of others, including private owners and the national interest lands, in identifying RS 2477 Rights-of-Ways.

Bill Bushey, Chairman, Board of Directors
Alaska State Chamber of Commerce
March 1, 1985

George Krusz, President
Alaska State Chamber of Commerce

Alaska Native Land Managers Association
[illegible] N Street
Anchorage, Alaska [illegible]
[illegible] 277-[illegible]

RESOLUTION ADDRESSING PROPOSED PLOTTING OF R.S. 2477 RIGHTS-OF-WAY TO PUBLIC LAND RECORDS

WHEREAS, the State of Alaska and the Bureau of Land Management have entered into a memorandum of understanding to identify and plot RS 2477 rights-of-way to the public land records; and

WHEREAS, the Alaska Native Claims Settlement Act corporations are major land holders which may be severely impacted by this action without an opportunity to participate in the decisions; and

WHEREAS, the notation of the public land records may provide the State of Alaska with added weight, in the case of litigation of an RS 2477 right-of-way, without a factual basis; and

WHEREAS, neither the State nor the Bureau of Land Management propose to adjudicate RS 2477 rights-of-way under the terms of the memorandum of understanding; and

NOW, THEREFORE, BE IT RESOLVED by the Alaska Native Land Managers Association that the Alaska Native Land Managers Association opposes the plotting of RS 2477 rights-of-way to the public land records.

WE FURTHER REQUEST that the following actions be taken:

1. Alaska Native Claims Settlement Act corporations are actively involved in the identification process, and

2. The Bureau of Land Management and the State of Alaska establish clear standards of construction and use against which all RS 2477 rights-of-way are to be considered, and

3. The issue of abandonment is clearly defined and addressed, and

4. Each RS 2477 right-of-way is adjudicated by the Bureau of Land Management, and

5. An accurate centerline description is provided to the Bureau of Land Management prior to plotting, and

6. A case file is established which sets out the history of each RS 2477 right-of-way together with complete documentation of the timing, duration type and amount of use and location.

BE IT FURTHER RESOLVED that this resolution be forwarded to the Alaska Federation of Natives, the Bureau of Land Management, the State Department of Natural Resources, the State Department of Transportation and Public Facilities, Alaska's Congressional Delegation, and to all State legislators.

Duly adopted this 30th day of January, 1985, in Anchorage, Alaska.

Frances E. Zimmerman

Frances E. Zimmerman, Secretary/Treasurer

LAND MANAGERS ASSOCIATION OPPOSITION

Tanana Chiefs Conference, Inc.

Doyon Building
201 First Avenue
Fairbanks, Alaska 99701
Phone (907) 452-8251

December 21, 1984

Mr. Mike Penfold
State Director
Bureau of Land Management
Box 13
701 "C" Street
Anchorage, Alaska 99513

Dear Mr. Penfold:

We recently received copies of a Memorandum of Understanding (MOU) between BLM's Fairbanks District, DNR's North Central District, and DOT/PF's Northern Region. The MOU states in its Purpose that federal, state and local officials need to know the locations of RS 2477 rights-of-way assertions in order to manage their respective lands. The MOU goes on to set procedures under which DOT and DNR will submit evidence supporting RS 2477 r/w assertions and BLM's Fairbanks District will plot these assertions on the Master Title Plats (MTP).

We believe this is a serious mistake on BLM's part and will only add more confusion to land management in Alaska. RS 2477 r/w carry much more uncertainty than just their location. There continues to be unanswered questions about their width, the allowed uses, degree of public use needed to establish a valid grant, abandonment, and maintenance. By recording the State's asserted claims on MTP's, BLM perpetuates these vagaries and even passes them on to the recipients of lands conveyed by BLM. It is BLM's responsibility to convey clear title to land and it is the State's right to seek legal remedies to whatever argument they have with such title. By placing such nebulous claims as RS 2477's on their records, BLM adds credence to unproved assertions and puts those who receive BLM conveyances in the position of having to defend their titles from the moment they receive them. A government title then becomes a sham since the basic rights of the owner aren't even defined by the agency conveying the title.

Prior to the MOU, DOT/PF prepared a briefing paper on RS 2477 r/w which states in part:

> "If the State documents its claims, other parties are put in the position of challenging the State's claim rather than vice versa. Presently, the State would have to prove 'valid existing rights' on conveyed land. If the trails

TANANA CHIEFS OPPOSITION

were already on the status plats, anyone who disagreed would be in the position of challenging the State's claim. Asserting an RS 2477 claim in this manner is only an administrative determination since BLM does not adjudicate RS 2477 claims. If someone were to challenge the State, the State's claim would still have to be proven in court; however, we certainly would be in a much better position to do this."

Clearly the State's strategy is to cultivate doubt about titles to lands crossed by their asserted rights-of-way and to place the burden of proof on the patentee. BLM is promoting this strategy in your own Instruction Memo, AK-85-72 of November 28, 1984 stating that "the BLM does not need comment or concurrence from Native Corporations to note assertions on lands that it manages (including lands that are merely selected by such corporation)". Furthermore, that, "A Native Corporation is free to challenge the assertion, in court, after it acquires title".

The use of the word 'free' in this context is ludicrous. Native Corporations and individuals should be FREE from receiving clouded titles to their lands after waiting 13 years, and FREE from having to defend their titles from assertions to nonspecific encumbrances.

By putting the State's assertions on MTP's, the BLM invites trespass by third parties such as miners, hunters and recreationalists. We believe that BLM, in effect, is creating the conditions whereby such trespass will certainly result. This would affect not only private lands but national parks, wildlife refuges, and wilderness areas, since the MOU covers "any land within the State of Alaska,...both state and non-state lands".

Section 4 of the MOU cites a State court decision contrary to BLM Manual 2801 B.1.a., which requires actual construction, rather than mere use to establish a valid grant. We would like to know which interpretation will apply to federal lands? Since the MOU only names the Fairbanks Distict, we would like to know what the statewide procedures are and what your bureauwide procedures are. We would also like to know what weight these assertions have on lands already patented or IC'd, and on Native Allotments; whether they are pending, approved or certificated. We would also like to know if landowners affected by these RS 2466 claims are being notified by BLM of these assertions and being given an opportunity to submit material for the case files.

These right-of-way assertions are going to cloud land titles all over the State and BLM's present course is only passing the problem on to those receiving BLM conveyances. It is BLM's responsibility to convey CLEAR title and to protect the integrity of selected lands under BLM's ~~INTERIM~~ management. To accomplish this BLM should seek a statute of limitations for asserting rights-of-way under RS 2477. There should be Federal regulations that clearly define the requirements to be met before a valid grant can issue, as well as the width of the right-of-way, the responsibility for maintenance, the allowed uses, seasonal use, cessation of use, notice and appeals. These rights-of-way will greatly affect the management and development of all our lands. Their requirements and rights granted must be no less clear than any other type of right-of-way and cannot be left to interpretation if a Federal land patent is to carry its weight as the beginning in the chain of title. Valid public access certainly needs to be protected, but in the present situation RS 2477 jeopardizes far more than it protects.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

William C. "Spud" Williams
President

jv
✓ cc: Bill Horn

Interior Village Association

CORPORATE DEVELOPMENT AND
TECHNICAL SERVICES FOR
VILLAGE BUSINESS CORPORATIONS

1278 MINNIE STREET
FAIRBANKS, ALASKA 99701
TELEPHONE: (907) 452-1601

October 23, 1984

Dan Alex, President
Alaska Native Land Managers Association
Pouch 6699
Anchorage, AK 99502

Dear Dan:

Enclosed are copies of a recent MOU between BLM, DNR and DOT/PF (in Fairbanks), and a DOT/PF briefing paper on RS2477 Rights-of-Way. I have serious objections to them from both a land title and a land management perspective.

To begin, RS2477 Rights-of-Way are rights-of-way which, if valid, are rights granted outside the statutory realm of ANCSA or FLPMA, i.e., 43 USC 932. Basically, if a right-of-way is to be determined valid, the land over which it crossed had to be vacant, unreserved, public lands at the time use began and there has to be a determination, (frequently in court if the landowner objected), that there was sufficient public use or expenditure of public funds, to qualify under the statute. If determined valid, the right-of-way width was usually ditch to ditch. The only entity with the authority to adjudicate these rights is a court of law, not the BLM.

What this means in practical terms is that these rights-of-way have never been identified in title documents granted to private landowners in this state or elsewhere in the lower 48 until the State of Alaska pressured BLM to insert these rights-of-ways in native conveyances. Since BLM cannot, by law, adjudicate these rights, they are considered assertions until they are proven.

If a trail or road crossed a private landowners property and the landowner questioned the public's right to use the trail, the owner may block the trail. If the user objects, he can take the landowner to court to protect his right of access, or vice versa.

The MOU, needless to say, was written without native input. It establishes a de facto adjudication process which places these rights-of-way on BLM's land status documents and ultimately in Native Land conveyances. The Native landowner has no opportunity to protest. The State, on the other hand, has gained another leg up on the private landowner by having these assertions of rights placed on the public land records and Native land title without

an opportunity for complete adjudication in the proper forum. (Please read their briefing paper closely.) If the RS2477 assertion ends up in the land conveyance, the Corporation receives a clouded title document and faces potentially significant management problems.

The management problems can be significant. First, most of these RS2477 assertions are made on cold winter trails. With modern technology many people want to use these trails in the summertime, a period when it is impractical to use the trail in its winter location, so they begin to move this way and that to avoid the pot holes and permafrost areas creating new trails and often serious surface damages. This creates surface damage problems for the landowner. There is also a question whether the public has the right to use a winter trail in the non-winter months.

Secondly, as the DOT/PF briefing paper points out, even if an RS2477 is determined to be valid, the state has reserved the right to decline to maintain the rights-of-way. This leaves the landowner with continued resource destruction and the public using a potentially unsafe public right-of-way. In simple terms, the state wants its cake and eat it, too. I say that if they want the rights of ownership, they should accept the obligation to manage and maintain them!

My recommendation to the Native Land Managers is to consider these points and, if they agree, develop a strategy involving our congressional delegation and state legislators to remove these assertions from the public land records until proven valid in the proper forum and seek legislation that would require the state to accept management responsibility when they assert title.

Sincerely,

Paul C. Costello
President

PCC/bap

Interior Village Association
IVA

CORPORATE DEVELOPMENT AND
TECHNICAL SERVICES FOR
VILLAGE BUSINESS CORPORATIONS

127½ MINNIE STREET
FAIRBANKS, ALASKA 99701
TELEPHONE: (907) 452-1601

November 1, 1984

Lavelle Black
Dept. of Interior
Alaska Program Staff (311)
18th and "C" Streets, N.W.
Washington, D.C. 20240

Dear Lavelle:

Here is the letter and enclosures we discussed today. As I indicated, they create problems in three related areas.

1). To begin, if I were a native landowner, I would be offended that BLM drafted such a document without any visible effort to involve the native community. As my lawyer friends would say, "It flies in the face of ANCSA."

2). Next, the MOU establishes a de facto adjudication of less than fee interests when BLM does not have the authority to adjudicate RS 2477 interests. The only forum to properly adjudicate them is with the landowner, or if that proves to be unsuccessful, in court. The only Federal land title to be prejudiced with these questionable assertions are native lands. In my experience I have never found a Federal patent in the Lower 48 which purported to adjudicate an RS 2477.

3). It represents land management philsophy at its least, i.e., the State would like title any way they can get it, but want "the right to refuse service" (maintenance) to anyone. This creates a conflict between the unsuspecting user and the landowner when a user attempts to use a damaged trail and finds that he cannot because of permafrost degradation, for example. He makes the choice of not going or just moving the trail over a bit to avoid the impassable section. Hence, he infuriates the landowner by destroying surface resources and trespassing. The user then faces an irate landowner, possible criminal charges and the State who chooses to do nothing. The Seventy Mile Trail in Eagle is a good example.

My solution is simple. Revoke the MOU and let the landowners and the State decide in the manner most practical which right is valid and who is responsible for that right. If a right is valid because there is a continuing public use and need, then let the State seek the funds to maintain the right-of-way on a case by case basis. BLM is helping neither themselves

nor the Native community nor, in the run, the taxpayers of this state, in trying to decide what is best for a situation that they have no legal obligation to be involved in.

I hope that this finds you well and enjoying the fall season in Washington. Give my regards to Bob.

Sincerely,

Paul C. Costello
President

Enc: Letter to Dann Alex
Briefing Paper
MOU

PCC/bap

Northern Alaska Environmental Center

218 DRIVEWAY
FAIRBANKS, ALASKA 99701
(907) 452-5021

TO: Senate Resources Committee
Arliss Sturgulewski, Chair

FROM: Randy R. Rogers, Director, NAEC

SUBJ: SJR 10--R.S. 2477

Date: February 21, 1985

In September the Bureau of Land Management and the Alaska Departments of Transportation and Natural Resources signed a memorandum of understanding, the full implications of which those parties are most likely not even aware. This memorandum establishes a procedure for placing formal assertions of R.S. 2477 rights-of-way by the state on both state and federal master title plats, signifying the legitimization of a state right-of-way.

The process of developing this agreement took place with absolutely no public involvement and, in fact, BLM would not even allow representatives of the Northern Alaska Environmental Center to review copies of the memorandum while in its draft stages. In addition to the lack of public involvement, representatives of the National Park Service, Fish and Wildlife Service, and native corporations, whose lands may be substantially impacted by this agreement, were not included on the committee that drafted the memo.

Revised Statute 2477 was originally established by the U.S. Congress in the Act of July 26, 1866. The entire, original statute provided:

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

This law was established at a time when automobiles and D-9 Cats did not exist and a "highway" referred to a wagon trail at most.

Because the law is so vague most of the parameters defining the actual use of R.S. 2477 have been established through case law. Yet, there have been very few cases in Alaska which define how the law applies within the state. Despite this lack of a conclusive definition, the memorandum of understanding uses what small body of law is available to establish criteria for the BLM to accept the assertions. This will result in placing the burden of legally challenging the application of the law on individual persons who disagree with the shaky BLM definition.

There are literally hundreds of historic trails in Alaska which could possibly be claimed under R.S. 2477. Many of these trails cross portions of conservation units and have the potential to severely compromise the purposes for which the units were established.

ENVIRONMENTAL CENTER ANALYSIS

An example of one such trail is the Bielenberg Trail where a miner was arrested this fall when he moved mining equipment across the Yukon-Charle National Preserve to his mining claims on Woodchopper Creek. The miner contends that, because the route he was using is a public highway established under the terms of R.S. 2477 (a claim which has not been legally proven), he does not need an access permit from the National Park Service.

This case of trespass on NPS lands is now in court. Meanwhile, the State of Alaska has filed a formal assertion of this right-of-way with BLM unde the process defined in the new memorandum of understanding, an action which jeopardizes NPS' position in court because of the R.S. 2477 policy of BLM. BLM, it should be pointed out, is an agency of the Department of the Interior, as is NPS.

Another controversy with regard to R.S. 2477 which is extremely disturbin involves Gates of the Arctic National Park. In February, 1984, the Department of Natural Resources sent a letter to NPS stating that, becaus the route of the Coldfoot Classic Sleddog Race lies on state-claimed R.S. 2477 rights-of-way and on navigable waterways, the organization conductin the race need not obtain a special-use permit from the Park Service.

This action regarding a sleddog race may be viewed as an innocent action; however, under the current state policy, or lack of policy, once the right-of-way is established it could be used for unrestricted mining acce or other purposes which would be devastating to the wilderness resources of the park. In this instance, NPS responded to the state that the route would not be considered a valid right-of-way until legally proven through the courts.

This example further demonstrates the widely differing interpretations of R.S. 2477 by NPS and BLM. Although the agreement between BLM and the sta is not intended to apply to lands not under BLM management, validation of the rights-of-way on BLM lands could establish a precedent that would be detrimental to legal challenges of their validity on NPS, Fish and Wildlife Service, native, or private lands.

In developing its R.S. 2477 policy, BLM has obviously not considered its ramifications to other land managing agencies, nor has it thoroughly considered how it will affect land under its own jurisdiction.

At the November 15, 1984, meeting of the Fairbanks District BLM Advisory Council, a BLM representative indicated that, if the state asserted an R.S. 2477 claim into the primitive portion of the White Mountains Nationa Recreation Area, (which is closed to all off-road vehicle use) and the assertion met the criteria spelled out in the memorandum of understanding thereby ending up on the BLM master title plats, a miner could drive a D-9 Cat through the primitive area with no BLM approval required.

Many potential R.S. 2477 routes are important for their recreational use, but their status as such is unclear because of the confusion surrounding R.S. 2477. Two primary examples are the Chena Hot Springs Winter Trail and the Circle-Fairbanks Historic Trail.

In July, 1982, the state acknowledged that the Chena Hot Springs Winter Trail has standing as an R.S. 2477 right-of-way yet refused to protect the trail's recreational properties because it is not a "main or significant arterial thoroughfare." When the Fairbanks North Star Borough discussed the establishment of the Circle-Fairbanks Trail as a recreational trail, the Department of Natural Resources indicated that, because the trail is identified as an R.S. 2477, they could do nothing to manage it for recreational purposes.

The importance of clearing up the R.S. 2477 issue is demonstrated by the fact that over 30 percent of recreational trails in the Fairbanks North Star Borough inventory are tentatively identified as R.S. 2477 rights-of-way by the Department of Transportation.

Equally disturbing as the recent developments with the R.S. 2477 issue is that, although the new agreement between the state and BLM defines a procedure for placing R.S. 2477 rights-of-way on land status plats, thereby legitimizing the claims, the involved state agencies are not certai who will be responsible for managing, maintaining or accepting liability for the roads. And questions such as what period of non-use constitutes abandonment of the rights-of-way, if the rights-of-way are restricted to historical types and seasons of use, and what width the rights-of-way are, remain to be answered.

The manner in which this major state and federal action has taken place is highly questionable. It is irresponsible land management on the part of both the BLM and the state to establish an agreement or take action to validate any of these possible rights-of-way before it is known what purpos they will serve, what effects they will have on management of surrounding lands, how they will be managed, and where the legal responsibilities lie. The need to delineate how R.S. 2477 will be dealt with in Alaska is clear, but a procedure to administratively approve the rights-of-way without public involvement, and prior to an adequate understanding of how they will be managed makes a travesty of safeguarding the public interest.

The state and BLM should abolish the existing memorandum of understanding, examine the basic legal,fiscal, and management responsibilities associated with the rights-of-way, and establish a new procedure for solvin this dilemma which is accompanied with full public involvement and the participation of all affected land owners and managers.

COPY

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.

DOT- DNR / BLM M.O.U.

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

Jerry L. Brossia Date 9-28, 1984

Jerry L. Brossia, District Manager,
Northcentral District Office, Alaska Department of Natural Resources

Carl S Johnson Date 9/28, 1984

Carl Johnson, District Manager,
Fairbanks District Office, Bureau of Land Management

H Glenzer Date 28 Sept, 1984

H. Glenzer, Deputy Commissioner,
Northern Region, Alaska Department of Transportation & Public Facilities

IN REPLY REFER TO

2800 (932)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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

September 7, 1984

Memorandum

To: Member of ALUC

From: State Director, Alaska

Subject: R.S. 2477 Issue Paper

Transmitted herewith is an issue paper which sets forth BLM's policy on R.S. 2477 rights-of-way. The policy has been altered enough in recent years to allow us to note these claims on our records provided the State takes the initiative and files an application for notation which meets the criteria set out in the issue paper.

In the absence of the State formally asserting its rights under the Statute, BLM has no choice but to consider the lands involved to be vacant public lands without established public access. BLM has had numerous discussions with the State concerning R.S. 2477 and the State is well aware of our policy and procedures.

Enclosed is a draft MOU between our Fairbanks District Office and the State of Alaska which is intended to facilitate the policy set out in the issue paper. Also enclosed is a copy of our BLM Manual section on R.S. 2477 and a copy of a Regional Solicitor's Office memorandum to the Bureau of Indian Affairs dated May 21, 1980.

The Fairbanks District Office and the State of Alaska, Department of Transportation and Public Facilities, Northern Region have been working on this Draft MOU for sometime now and have established a good working document which fits well within the constraints of our regulations.

Our first preference would be to have the cooperative State Federal work on R.S. 2477 started in Fairbanks proceed. However, we would not object to the Council taking this matter under its wing if this is what the State wishes. Under any circumstance, the State must clearly take the leadership role.

Michael J. Penfold
State Director

Enclosure (1) w/Exhibits I, II, and III

BLM POSITION

Issue Paper - R.S. 2477 Roads and Trails

Under DOI existing authority and policy, it is the responsibility of the State of Alaska to officially assert its claimed rights by filing applications for notation of such rights-of-way on our records. Such applications in addition to providing the information required to show the highway meets the four criteria set out below must provide a plottable description of the facility so that BLM's records can be properly noted.

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 the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, 90 stat. 2743, has been interpreted as granting a right-of-way for public use over public land without limiting the method of establishment of that right-of-way. 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 (R.S. 2477) did not specify the extent of the grant, the width of the right-of-way, or the nature of the right conveyed. Since the Department does not grant such rights-of-way, it has consistently held that it has no authority to adjudicate claims made under this Act. Therefore, acknowledgements of such claims have not been inserted in Federal Land Patents. The courts have held that reservation of an R.S. 2477 right in our patents is not necessary to validate or protect rights-of-way created under the statute.

In order to facilitate proper management of the public land, the Department has to have sound transportation plans. It is, therefore, necessary to identify all public roads in a given area. To facilitate such identification the Bureau of Land Management has recently been given authority to note claimed R.S. 2477 highways (roads, trails, etc.) on its official status plats, provided that requests for notation meet the following criteria:

1. In order for a valid right-of-way to exist, there must have been actual construction of a highway. Mere use, planning, or survey is not considered construction. However, construction of the highway need not have occured all at once. Road maintenance often equals improvement and even construction. When the history of a road is questionable, it's existence in a condition adequate for public use may constitute evidence that construction has taken place.

2. The highway is free and open to the public at large.

3. The construction of the highway on unreserved public land must have occurred prior to repeal of R.S. 2477 on October 21, 1976.

4. The State must have a procedure to confirm the R.S. 2477 public highway right-of-way grant.

Once the State application is received, BLM has the responsibility to assure that the lands covered by the claimed right-of-way were, on the date of establishment of the highway, unreserved public lands. If the information submitted by the State meets the four criteria above, BLM assumes (it does not adjudicate the claim) that the road is a bona fide R.S. 2477 highway. The BLM then acknowledges the State's claim and plots the right-of-way on its records.

Any uses other than for highway purposes within the boundaries of an R.S. 2477 right-of-way must be permitted by BLM by a separate right-of-way grant. It should also be noted that the R.S. 2477 grant extends only to the right-of-way itself, it does not include ancillary facilities such as material sources and stockpile areas.

The Fairbanks District of BLM is currently working on a Memorandum of Understanding with the State of Alaska, Department of Transportation and Public Facilities. This MOU is intended to facilitate notation of the State's claimed R.S. 2477 rights on BLM's official records.

BLM has no objection to elevating this MOU to State level if the Council so desires. However, even if the MOU is elevated to State level, BLM cannot by law or regulation note the State's R.S. 2477 claims to its records until the State DOT/PF files a formal request for notation accompanied by a plottable description and a date of appropriation. The initiative to begin the record notation process rests with the State.

Further, until the State officially identifies its claimed R.S. 2477 rights, so they can be noted on the records, Federal agencies have no recourse but to treat the lands involved as if they were free and clear of encumbrances. As an example, numerous contacts were made with the State of Alaska during the planning process on the Steese NCA and the White Mountains NRA. At no time has the State of Alaska identified any R.S. 2477 claims within these planning areas.

IN REPLY REFER TO
2800 (932)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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

RECEIVED
DEC 27 1984

November 28, 1984

Instruction Memorandum No. AK-85-72
Expires 9/30/ 85

To: DM's and DSD's

From: State Director, Alaska

Suoject: Notation of R.S. 2477 Right-of-Way Assertions on the Public Land Records

This memorandum is intended to supplement manual guidance on notation of R.S. 2477 right-of-way assertions. The BLM manual policy on notation of claimed R.S. 2477 is intended to facilitate BLM management of those lands it administers. BLM needs a sound transportation plan in order to effectively manage those public lands it administers; therefore, it is necessary to identify existing access routes on the Bureau's official records.

Notation of any particular R.S. 2477 assertion of right to these records is discretionary. The manual merely provides BLM a procedure of noting R.S. 2477 claims on its records, if BLM agrees that the assertions have at least potential validity. The manual procedure is not intended to force BLM to note assertions it believes to be questionable or invalid.

It should, however, be remembered that an R.S. 2477 grant is created by taking. The rights acquired thereunder attached immediately when the facility was first appropriated or constructed under the statute. Once a right-of-way is established under R.S. 2477, it may be abandoned only under procedures estaolished by State law.

The BLM should work with the State of Alaska to identify those existing access roads and trails which may be potentially valid R.S. 2477 assertions. When BLM agrees that a right may exist (i.e. the assertion may be valid) under the statute, it should note the assertion on its official land status records. If BLM does not agree that the right may exist, the assertion should not be noted to the records. BLM's notation of a potential right does not validate an invalid assertion and its failure to note a valid assertion does not void such assertion. The actual validity or nullity of an R.S. 2477 assertion can only be determined by a court of competent jurisdiction.

If an R.S. 2477 is asserted on a road or trail historically used only as a winter trail and use begins to occur during the other seasons which causes environmental damage, BLM's recourse is to try to get the State to maintain the trail or for BLM to sue for damages on Federal lands. Seasonality of use should

BLM NOTATION MEMO !

be defined by the type of use which existed at the time the trail or road was established or appropriated. The background and history of the trail may need to be checked to determine if use has been seasonal.

BLM will note potentially valid R.S. 2477 assertions only across lands which it administers. Notations will not be made on lands withdrawn for other agency use, unless BLM has an MOU regarding notation with that agency having jurisdiction over the land. Assertions of rights will not be noted on land which have been Interim Conveyed or Patented to a Native Corporation or Tentatively Approved or patented to the State of Alaska.

The BLM does not need comment or concurrence from Native Corporations to note assertions on lands that it manages (including lands that are merely selected by such corporations.) BLM is only acknowledging a claim of a valid existing right to such lands. Such an acknowledgment does not change the validity or invalidity of the right. The existence of such a potential right will not be cited in any conveyance document as an encumbrance. A Native Corporation is free to challenge the assertion, in court, after it acquires title.

BLM will not specifically reference an R.S. 2477 claim, assertion or notation in the deeds or patents it issues for any claim or entry made under the public land laws, unless the inclusion of a reference to such claim has been agreed to, in writing by all affected parties.

There may be situations where the State of Alaska may find it advantageous to acquire a right-of-way under Title V of the Federal Land Policy and Management Act in lieu of an R.S. 2477 notation. Patents for entries made after granting of a Title V right-of-way are made subject to the right-of-way.

It should also be noted that the BLM cannot impose restrictions or stipulations restricting the use of an R.S. 2477 road or trail for those purposes authorized by statute. Only the State can impose restrictions on such uses. However, R.S. 2477 did not authorize the construction of non- access facilities such as powerlines, pipelines, etc. Such facilities, if not covered by a granted right-of-way constitute unauthorized use.

In deciding whether to note an assertion on the BLM records, BLM may perform a field examination and/or prepare a report to substantitate its decision as to disposition of the assertion. However, such action is not required.

Fred Wolf
State Director
Acting

Distribution:
D-DSC (D-558A)

United States Department of the Interior
OFFICE OF THE SOLICITOR
ANCHORAGE REGION
510 L Street, Suite 408
Anchorage, Alaska 99501

IN REPLY REFER TO

May 21, 1980

MEMORANDUM

To: Acting Area Director
Bureau of Indian Affairs
Juneau

From: David S. Case
Attorney/Advisor

Subject: Rights of Way on Allotments --
R.S. 2477 and Other Access Questions

I. INTRODUCTION

A. Your Requests

Over the last twelve months you have directed three opinion requests to this office regarding access to and across Native allotments. Your first request (dated May 22, 1979) asked about the effect of Native occupancy on the establishment of section line road easements under R.S. 2477.[1] Your second request (dated July 6, 1979) was for general guidance about the method for assuring access to landlocked Native allotments you had advertised for sale. You also asked if you have to disclose any access problems in your sale advertisement. With respect to R.S. 2477 easements, you asked whether a section line easement for public access would suffice for private access to an otherwise landlocked

---

1/ The request was entitled "Effect of Statutory Reservations on Native Allotments" and was answered in a memorandum by Dennis Hopewell of this office, dated September 4, 1979. The section line easement question was specifically excluded from that response pending this reply.

Exhibit III

(1) BIA MEMO

allotment. Your final request (dated April 4, 1980) reduced to its essentials, asked whether the Indian right of way laws and regulations apply when the right of way on or through a certified allotment coincides with a surveyed section line easement arguably granted under R.S. 2477.

B. R.S. 2477 in Brief

R.S. 2477 is an 1866 Act "granting" highway rights of way over public lands in the following deceptively simple terms:

> The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted. Act of July 26, 1866, c. 262, sec. 8, 14 Stat. 253.

This act was initially codified as Revised Statute (R.S.) 2477 and later as 43 U.S.C. 932. It was repealed by Section 706(a) of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, PL 94-576, 90 Stat. 2743, 43 U.S.C. 1701, et seq.

Your questions focus on the section line easements appropriated by the Territory and State of Alaska under this federal authorizing legislation. The State statute appropriating the section line easements is codified as Alaska Statute (AS) 19.10.010. However, the the R.S. 2477 grant includes other kinds of rights of way other than those appropriated under this statute. On the other hand, you should note that the R.S. 2477 grant is specifically limited to rights of way over "public lands." The latter point is significant, because it is our opinion that Alaska Native use and occupancy sufficient to qualify for a certificate of allotment is also sufficient to withdraw the land occupied from "public land" status.

Finally, the State's acceptance of the R.S. 2477 grant along section lines has had an on-again, off-again history that must be taken into account when determining whether the easements granted under R.S. 2477 have ever been accepted by the State. Thus, the answers to your questions require some background in the meaning of the term "public lands" and in the history of the application of R.S. 2477 in Alaska. In order to give some direction to that discussion, however, we have provided short answers to each of the questions posed in your opinion requests.

II. SHORT ANSWERS

A. May 22, 1979 Request

We agree with the conclusion expressed at page 2 of your opinion request about the effect of Native use and occupancy on the establishment of a section line easement. However, we would state your conclusion more definitely: If use and occupancy were initiated after survey of the section line, then the section line easement is superior to the allottee's rights and a right-of-way across the allotment does not require the consent of the allottee or a grant from the United States. If use and occupancy began any time before the survey, then the easement can only be granted with the consent of the allottee and according to the applicable Indian right of way laws.

B. July 6, 1979 Request

We know of no principle requiring you to disclose whether or not there is access to advertised parcels; furthermore, otherwise valid section line easements can be used to provide private access, but they are also open to the public. Under some circumstances, however, easements by necessity can be implied across otherwise unencumbered lands to afford private access to landlocked parcels.

C. April 4, 1980 Request

Whether the Indian right of way laws apply to a Native allotment depends on whether the allottee commenced use and occupancy before or after a section line right of way was appropriated by survey.

III. DISCUSSION

A. R.S. 2477

1. History and Purpose of R.S. 2477

U.S. Supreme Court and Ninth Circuit cases have cast some doubt on whether R.S. 2477 applies in Alaska. A narrow reading of the U.S. Supreme Court's opinion in Central Pacific Railway Co. v. Alameda County, 284 U.S. 463 (1931), and the Ninth Circuit's later decision in U.S. v. Dunn, 478 F.2d 433, 445 (9th Cir. 1973) would indicate that R.S. 2477

was only a recognition of pre-existing rights rather than a grant of new rights. Strictly construed, this interpretation could mean that R.S. 2477 was never applicable to Alaska, since it was enacted in 1866, one year prior to the purchase of the Territory.

The Territorial and State cases, on the other hand, consistently characterize R.S. 2477 as "in effect, a standing offer from the federal government" for the grant of a right of way, Girves v. Kenai Peninsula Borough, 536 P.2d 1221, 1226 (Alaska 1975). Under this interpretation, the right of way has been held to come into existence upon the "acceptance" of the standing offer. See Berger v. Ohlson, 9 Alaska 389 (D. Alaska 1938); Clark v. Taylor, 9 Alaska 298 (D. Alaska 1933); United States v. Rogge, 10 Alaska 130 (D. Alaska 1941); State v. Fowler, 1 Alas. L.J. 7 (April 1963); Hammerly v. Denton, 359 P.2d 121 (Alas. 1961). Given the weight of authority in this jurisdiction and the historical reliance placed upon R.S. 2477 in Alaska as a source of rights of way across the public domain, we are unwilling to conclude that the statute has no applicability to Alaska. We suspect that if the question were squarely presented to the Ninth Circuit Court of Appeals it would agree.

It has been held that R.S. 2477 first became applicable in Alaska by the Organic Act of May 17, 1884, 23 Stat. 24, whereby Alaska first became an organized territory. Section 9 of that Act, among other things, provided that the laws of the United States be extended to the Territory of Alaska, U.S. v. Rogge, 10 Alaska, supra at 147. As noted previously, R.S. 2477 is construed as a standing offer from the federal government for the creation of a right of way, Girves v. Kenai Peninsula Borough, 536 P.2d, supra at 1226. Under this construction, it has been held that the offer can be accepted (and the right of way created) either (1) by a positive act of the state or territory clearly manifesting an intent to accept the o[illegible] Hammerly v. Denton, 359 P.2d, supra at 123.[2/]

2/ Accord: Wilderness Society v. Morton, 479 F.2d 842, 882 (D.C. Cir. 1973), cert. den'd. 411 U.S. 917.

or (2) by public use of the right of way for such a period of time and under such conditions as to prove that the offer has been accepted, id.

Statutory acceptance of the grant, formal expression on the part of public officials of an intention to construct a highway or actual public construction of a highway may all constitute acceptance of the R.S. 2477 grant by the "positive act" of the appropriate public authorities. Thus, in Girves, supra, the Alaska Supreme Court held that AS 19.10.010 (establishing a highway easement along all section lines in the State) was sufficient to establish a right of way along the boundary of plaintiff's homestead coinciding with a surveyed section line. In Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir. 1973), it was held that the State's application to the Bureau of Land Management to construct a "public highway" from the Yukon River to Prudhoe Bay, along with enabling State legislation, was sufficient to establish an acceptance of the federal grant. In addition, the actual construction or public maintenance of a highway may constitute acceptance. See Moulton v. Irish, 218 P.2d 1053 (Montana 1923), construction of highways; Streter v. Stalnaker, 85 NW 47 (Nebraska 1901), public maintenance and improvement of highways.

Public use (sometimes called "public user") may also constitute acceptance of the grant in the absence of any positive official act. Whether any claimed use constitutes acceptance of the grant, however, is a question of fact to be decided by the court. It appears that continued and consistent use of a right of way across the public lands by even one person with an interest in the lands to which the road gives access may be sufficient to establish public user, State v. Fowler, 1 Alas. L.J., supra at 8 (April 1963). See also Hamerly v. Denton, supra at 125. However, the Alaska Supreme Court has held that mere desultory or occasional use of a road or trail does not create a public highway, id.3/

3/ Of course, it is no longer possible to accept the R.S. 2477 grant by any of these methods, because R.S. 2477 was repealed by FLPMA, supra, in 1976.

2. Allotments As "Public Lands"

By its terms, R.S. 2477 is only an offer for a right of way across "public lands." In discussing this term in the context of R.S. 2477, the Alaska Supreme Court has noted:

> The term "public lands" means lands which are open to settlement or other disposition under the land laws of the United States. It does not encompass lands in which the rights of the public have passed and which have become subject to individual rights of a settler. Hammerly v. Denton, supra at 123.

Beginning with the 1884 Organic Act, previously discussed, Congress has specifically provided for the protection of lands used or occupied by Alaska Natives. Section 8 of the Organic Act provided in part:

> That the Indians or other persons in [Alaska] shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress.[4/]

Federal decisions have long recognized the statutory protection afforded Alaska Native use and occupancy. See, e.g., U.S. v. Berrigan, 2 Alaska 442 (D. Alas. 1904); U.S. v. Cadzow, 5 Alaska 125 (D. Alas. 1914). Departmental regulations and policy reinforce the statutes. See, e.g., 43 CFR §§ 2091.1(e), 2091.2-1, 2091.5, 2091.6-3; see also Government Appropriation of Rights-of-Way in Alaska, Opinion of the Associate Solicitor, Public Lands (M-36595, March 15, 1960, copy attached).

In analogous circumstances, the U.S. Supreme Court has consistently recognized that railroad land grants are not to be construed in derogation of Native use and occupancy

---

[4/] Similar provisions appear in the following acts: Act of March 3, 1891, c. 561, 26 Stat. 1095, § 14; Homestead Act of May 14, 1898, c. 299, 30 Stat. 412, § 7; Act of June 6, 1900, c. 786, 31 Stat. 330, § 27.

rights. That is particularly true where those rights have been protected by treaty, Leavenworth L & GR Co. v. United States, 92 U.S. 733 (1875), or specific statutory exceptions, Buttz v. Northern Pacific Railway Co., 119 U.S. 55 (1886). See generally, Bardon v. Northern Pacific Railway Co., 145 U.S. 535, 540-543 (1892). Most significantly, the U.S. Supreme Court has specifically protected rights of individual Native occupancy against competing federal grants even in the absence of any statutory or treaty protections where those rights flow "from a settled government policy." Cramer v. United States, 261 U.S. 219, 229 (1923). Whether from the statutory protection afforded in the 1884 Organic Act and the other legislation specifically noted or from the settled government policy of protecting Alaska Native use and occupancy, we think it is clear that lands used and occupied by individual Alaska Natives are not "public lands" within the meaning of R.S. 2477 and that the R.S. 2477 grant cannot attach during any period of such occupancy.

3. Acts Accepting the R.S. 2477 Grant

(A) Section Line Easements. You have noted that AS 19.10.010 establishes rights of way of varying widths along the section lines in the State. As noted earlier, the Alaska Supreme Court has concluded this statute is a positive official act constituting acceptance of the R.S. 2477 grant, Girves, supra. The Territorial statute accepting the grant was originally enacted on April 6, 1923 (19 SLA 1923), but was subsequently repealed (perhaps inadvertently) on January 18, 1949. Op. Ak. Atty. Gen. No. 7 at 3 (December 18, 1969). The statute was subsequently reenacted in substantially its present form by the 1953 Territorial legislature (Act of March 21, 1953, 35 SLA 1953). Id. Thus, whether a section line easement has attached to Native occupied land must be viewed against the backdrop of the dates of Native occupancy and the dates during which Alaska's acceptance of the grant was in effect. The section line easements could only attach to lands not occupied by Natives between the dates of April 6, 1923, and January 1949, and from March 21, 1953, forward.

Additionally, by the terms of the State statute, the acceptance is dependent on the existence of a "section line." In the Opinion previously noted, the State Attorney General also concluded that for the R.S. 2477 grant to attach under the statute, the "public lands must be surveyed and section lines ascertained," id. at 7. We agree with this conclusion; therefore, you must also determine whether

the lands in question were subject to individual Native use and occupancy on the date the section line was actually surveyed.[5/]

(B) Other Official Acts of Acceptance. As noted earlier, other official actions (i.e., construction, repair, dedications, etc.) can constitute official acceptance of the R.S. 2477 grant. Whether such official action has created an R.S. 2477 right of way will have to be determined on a case-by-case basis.

(C) Public User. Rights of way claimed to have been created by public use must also be determined on a case-by-case basis. On the one extreme, an obvious public road established prior to Native use and occupancy would certainly be sufficient to constitute acceptance of the R.S. 2477 grant; see State v. Fowler, 1 Alas. L.J. 7, supra. On the other extreme, it is equally clear that desultory or occasional use of a road or trail by individuals having no interest in the land to which they obtain access is not sufficient to create an R.S. 2477 right of way, Hamerly v. Denton, supra. Whether a given use is sufficient to constitute acceptance of the R.S. 2477 grant, may have to be determined judicially in all but the most obvious cases.

4. Widths

By State statute, section line easements on "public lands" are four rods (66 feet) wide with the section line as a center of the dedicated right of way.[6/] Other official

---

5/ The Attorney General also concluded that the R.S. 2477 grant attaches on the date the "protracted surveys" were published in the Federal Register. We do not agree with this position; as a practical matter, the protraction diagrams are not a reliable means of ascertaining the correct position of the surveyed section line.

6/ A right of way 100 feet wide is granted between sections of land owned by or acquired from the State. Since Native occupied lands could not fall within this category, section line easements on Native allotments will be confined to the 66 foot width.

acts could conceivably establish larger rights of way. Rights of way established by public user appear to be confined to the width actually used, State v. Fowler, supra.

B. Other Access Questions

1. Obligations To Provide Access

We do not believe either the allottee or the United States is obligated to provide a warranty of access to the purchaser of an allotment. By statute (AS 34.15.030) Alaska has incorporated the common law covenants for title into any deed which by its terms "conveys and warrants" real property to another. Thus, a deed substantially in the statutory form includes implied warranties that at the time of the conveyance the grantor: (1) is lawfully seized of the estate in fee simple and has the right and power to convey the premises; (2) that the premises are free from encumbrances and (3) that he warrants quiet enjoyment of the premises and to defend the title against all persons claiming the premises.

You have advised that you use a special warranty deed to convey restricted Indian lands. As you know, a special warranty deed limits the grantor's obligation to defend only against claims arising through him. It does not require the grantor to defend against claims arising through other persons, 21 CJS "Covenants" § 49. Except as so limited, we believe the deed form you used includes all of the statutory covenants implied by AS 34.15.030. None of these, however, include a covenant of access to the land granted. See generally, Powell on Real Property, ¶ 904, et seq. (1968 edition). Furthermore, AS 34.15.030 specifically provides: "No covenant is implied in a conveyance of real estate, whether the conveyance contains special covenants or not." We interpret this to mean that unless there is a specific covenant of access, the grantor is not obligated to provide it.

2. Easements By Conveyance Or Covenant

In spite of the protection this doctrine affords both the United States and the allottee, we recommend that as a prudent land manager you advise the allottee to provide whatever access it is within his power to provide incident to the sale of an allotment. That is especially true if, as in one case you described to us, the allottee is selling a