

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4305 SRES SJR 10 - SJR 14

85

Testimony SJR #10

BLM status plats, the court might be persuaded to think that the claim was valid because it had some form of adjudication and acceptance by the BLM, when in fact they have no business doing so. Secondly, and more important, the paper said that even though the State can assert title, and claim ownership, it clearly has no obligation to maintain the given road, nor any liability for its inaction. In other words the state wants the right of ownership, but does not want the responsibilities and liabilities that go with that right. We feel that if the state owns a right of way, they should accept full responsibility for it, which includes maintenance.

Let me give you a specific example. The Seventy Mile Trail, near Eagle, Alaska, is an well known trail used by miners to get into the Seventymile country. It began as a dog sled trail, graduated to oat trains in the winter, and now is suffering year round abuse by people trying to access their property. As the technology of vehicular transportation improved, more and more people are trying to get their equipment and supplies into the back country at a time of year when the land clearly is not able to support vehicular traffic. So as a result, the vehicles have begun to fan out in all directions to avoid the ditches and sink holes created by this abuse. In some areas the trail is considered dangerous by the people live there and they dont use it. Yet when the State and BLM were contacted by the landowners, their response was to pass the buck back and forth. The State (and BLM) chose to do nothing, yet the State clearly claims that it owns the right of way under RS 2477. This leaves the traveling public facing dangerous trail conditions, with no recourse except to move off the trail therefore damaging private land. It leaves the private landowner apparrently holding the liability bag if someone is injured, and facing the certainty of trespass and resource damage. This is a clearly unacepatable situation, yet this MOU and the proposed resolution, in our opinion, only make matters worse.

We are opposed to the resolution as it currently stands, because of the problems created by the MOU. We would rather see the following three things happen:

1. The State should prioritize those right of way assertions they feel are important, and begin talking to the landowners involved.

2. The State should actively seek private landowner involvement in the identification process. This means Doyon Ltd., the native Village corporations, Native allottees, and other private landowners.

3. The State should officially and clearly identify what they feel is the extent of thier rights and obligations as owner of RS 2477 rights of way. This should include, but is not limited to such things as, width of right of way, maintenance and operation obligations, limitations on use, for example is this a year around use open to all types of access?, location, ie, does this give the traveling public the right to move off the established trail when conditions change? etc. This statement must include acceptance of maintenance and operation of these rights of way.

Testimony SJR #10

Until these steps are taken, Doyon Ltd., and Interior Village Association cannot support the State and BLM in this effort, nor can we recommend that any other private land owner stand by and let this resolution proceed without objection.

Thank you for this opportunity to comment.

BRIEFING PAPER

Alaska Department of Transportation and Public Facilities

Northern Region

Division of Planning

REVISED STATUTE 2477 RIGHTS-OF-WAY

STATE MANAGEMENT
JUL 29 10 21 AM '04
DISTRICT

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 official 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 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.

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).

NOTE DNR
BUT AN
AG
?

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 (i.e. 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 supporting 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 historical 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 Acquisition project which has \$95,000 remaining. This money was appropriated by the State Legislature for the purpose of acquiring 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 responsibility to submit the supporting documentation to BLM.

We recommend that DOT&PF seek a revised 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 historical 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 inter-agency cooperation.

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

DP:dp

FEB 15 1985

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* DELIVER TO: JPOM *
*
* ORIGINAL *
* SENT: 02/15/85 TIME: 08:20 *
* FROM: LANA TRUJILLO *
* SUBJECT: FOM *
* PRINT DATE: 02/15/85 TIME: 08:20 *
*

TO: ALL LEGISLATORS

FROM: SHERWIN A. START, 320 MCCARREY ST., C, ANCHORAGE, 99504,
337-8988

RE: SJR 10

ALL I CAN'T FIGURE IS WHY IT HAS TAKEN SO LONG FOR THE STATE TO
WAKE UP TO THE FACT THAT THE BLM HAS VACATED THOUSANDS OF MILES
OF EASEMENTS ACROSS MILLIONS OF ACRES OF FORMER FEDERAL LANDS NOW
STATE. THEY HAD POTENTIAL OF BEING VITAL TO THE STATE??

*
* DELIVER TO: LTCJ *
*
* ORIGINAL *
* SENT 02/22/85 TIME: 13:52 *
* FROM: LIOF *
* SUBJECT: SJR 5 & 10/SENATE RESOURCES *
* PRINT DATE: 02/22/85 TIME: 13:53 *
*

EMAIL #3 - FAIRBANKS PARTICIPANTS

TO TESTIFY

17. HUGH B. FATE, JR.

18. Ric Davidge ^{LOIC}

 * DELIVER TO: LTCJ *
 * ORIGINAL *
 * SENT: 02/22/85 TIME: 13:35 *
 * FROM: LIOF *
 * SUBJECT: SJR 5 & 10/SENATE RESOURCES *
 * PRINT DATE: 02/22/85 TIME: 13:35 *

EMAIL # 2 - FAIRBANKS PARTICIPANTS

TO TESTIFY

- 12. ROGER BURGGRAF *LOK*
- 13. STAN RYBACHEK *LOK*
- 14. STAN LEAPHART *Ent Dir Cit Adv.*
- 15. JOHN SIMS *DCED.*
- 16. PAULA CULLENBERG *- w/ Tanana Chiefs Conf - you met her when she was down about water quality*

will submit
will submit Scott Healey *AK Environmental Lobby*
 Phil Halderson *9-M9.*

*
* DELETED : CJ
*
*
* ORIGINAL
* SENT: 02/22/85 TIME: 15:17
* FROM: LIOF
* SUBJECT: SEN RES T/C SJR 5&10
* PRINT DATE: 02/22/85 TIME: 15:18
*

TO DORIS IN JUNEAU

ONGOING SENATE RESOURCES T/C

WILL YOU PLEASE INFORM THE CHAIR THAT JERRY BROSSIE WOULD LIKE TO
MAKE A COUPLE OF QUICK COMMENTS AFTER THE LAST SPEAKER.

MICHELE - FAIRBANKS

 *
 * DELIVER TO: LTCJ
 *
 * ORIGINAL
 * SENT: 02/22/85 TIME: 13:27
 * FROM: LIOF
 * SUBJECT: SJR 5 & 10/SEN RESOURCES
 * PRINT DATE: 02/22/85 TIME: 13:27
 *

PARTICIPANT LIST #1- FAIRBANKS

TO TESTIFY:

1. JERRY BROZIA *OK ✓*
2. MARY JANE FATE *OK ✓* *North Regional Dir — 2477 P.O.U.*
Rampart Village Co. V.
3. JOE VOGLER *OK ✓*
4. ALLEN R. CRONK *OK ✓*
5. RUDY VETTER *OK ✓*
6. DONALD ~~STERN~~ *Stain ✓*
7. FRANK BOREKI/TANANA CHIEFS CONF. *Realty Officer ✓*
8. RANDY ROGERS, NORTHERN ALASKA ENVIRONMENTAL CENTER *OK ✓*
9. PAUL COSTELLO/DOYON *OK ✓* *C.V.A.*
10. DONALD E. RUNDBERG - with ISLM - *(no) may only be there to answer questions*
11. DEL ACKELS *OK ✓*

*
* DELIVER T TCJ *
*
* ORIGINAL *
* SENT: 02/22/85 TIME: 14:01 *
* FROM: DAVID JENSEN *
* SUBJECT: ANCHORAGE PARTICIPANTS *
* PRINT DATE: 02/22/85 TIME: 14:02 *
*

TO: DORIS-TCJNU

FROM: DAVID-TCANC

PARTICIPATING IN ANCHORAGE AT THIS TIME ARE THE FOLLOWING PEOPLE:

TO TESTIFY:

JAMES R JINKS *OK*

Per David J/OK

TO OBSERVE:

1. VERNON R. WIGGINS - ALWC
2. MIMI DEBRA OYLEAR - AK. LAND USE COUNCIL
3. RIC DAVIDGE - ASST. SECT. FISH, WILDLIFE PARKS
4. ROB WALKINSHAW - DEPT. NATURAL RESOURCES
5. DEE FRANKFOURTH - ""
6. JERRY GALLAGHER - DNR DIV. OF MINING
7. DAN WILKERSON - DEC
8. LARRY VAN DAELE - ADF G
9. JAMES R. JINKS - AMA
10. SUE WOLF
11. GARY GUSTAFSON - DNR
12. JIM CULBERTSON - DNR
13. R. CONTOR - NFS
14. M. FINLEY - NFS
15. MIKE ABBOTT
16. JACK ALLEN
17. RON LUCLEY - AK. LAND USE COUNCIL

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

CS changes marked in
orange [REDACTED]

Original sponsors: Coghill, Abood,
Bennett, et al

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 Requesting that the Department of Natu-
6 ral Resources and the Department of
7 Transportation and Public Facilities
8 expedite the identification and estab-
9 lishment of rights-of-way for roads and
10 trails on federal Bureau of Land Manage-
11 ment plats which qualify under RS 2477.

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

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

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

22 WHEREAS several of the comprehensive management plans have been com-
23 pleted without recognition of existing roads and trails, preventng public
24 access through these units to state and private lands and to state waters;
25 and

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

29 WHEREAS the federal statutory authority for the establishment of

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

3 WHEREAS the Department of Natural Resources and the Department of
4 Transportation and Public Facilities on September 28, 1984, signed a Memo-
5 randum of Understanding with the federal Bureau of Land Management involv-
6 ing the northern region of Alaska only, establishing the procedure under
7 which the rights-of-way could be recognized on Bureau of Land Management
8 plats and in comprehensive plans for conservation units; *Governor's instruction*

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

14 FURTHER RESOLVED ^{that the Bureau include} that the state agencies involved affirmatively soli-
15 cit information from miners, engineers, land surveyors, ~~environmentalists,~~
16 ~~outdoor groups, landholders, or other persons or organizations that may~~
17 ~~have knowledge of the historic use of roads and trails~~ to assist the
18 departments in the identification of those roads and trails that could
19 qualify under the provisions of RS 2477 (43 U.S.C. sec. 932) for addition
20 to the state transportation system, and that may be useful to the federal
21 agencies developing comprehensive management plans for the various Alaska
22 National Interest Lands Conservation units; and be it

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

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

added
by
Resources
Committee

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

Alaska State Legislature

ARL ISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 485-4907

Senate

MEMORANDUM Committee on Resources

February 21, 1985

TO: All Members
Senate Resources Committee

FROM: Staff
Senate Resources Committee

RE: SJK 10 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.

Enclosed in this packet are:

- 1) A December, 1984 memo from Melissa Fouse to Sen. Sturgulewski that does a very good job of providing a short summary of the RS 2477 trails issue.
- 2) A summary of the RS 2477 issue by the Northern Region, Division of Planning of DOT/PF.
- 3) A position paper and summary of the RS 2477 issue by Randy Rogers, Director of the Northern Alaska Environmental Center.
- 4) An RS 2477 Issue Paper to the Alaska Land Use Committee by BLM.
- 5) A memo to the Alaska Land Use Council by the Citizen's Advisory Commission On Federal Areas on RS 2477 rights of way.
- 6) A Memorandum of Understanding between the state (DNR and DOT/PF) and BLM.
- 7) A BLM instruction memorandum on RS 2477 assertions.
- 8) Two letters from Paul Costello, president of The Interior Village Association, opposing RS 2477 assertions.
- 9) A letter to BLM from Spud Williams opposing RS 2477 assertions.
- 10) A resolution from the Greater Fairbanks Chamber of Commerce supporting RS 2477 assertions.

Committee staff has contacted a wide range of people to make them aware of this hearing. We would expect vigorous and divergent public testimony, particularly via the teleconference hookup in Fairbanks.

SENATOR
ARLISS STURGULEWSKI

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99508
SENATE DISTRICT F, SEAT A

Alaska State Legislature



Senate

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3818

MEMORANDUM

19 December 1984

TO: Senator Arliss Sturgulewski
FROM: Melissa Fouse

A short issue outline (cribbed in part from DOT) is as follows:

From 1866 to 1976 there was a federal law which granted states free rights-of-way across unappropriated public lands. This law was repealed in 1976 but states' claims may still be made under that statute, now called RS 2477. The object of the grant was to enable citizens to construct roads across public domain. There were no conditions except that the road had to be constructed and used by the public on what was at the time unreserved public land. RS 2477s were used for postal routes, freight hauling and access to mining claims, as well as other commercial travel and general public rights-of-way.

The status of these public rights-of-way is becoming an issue now due to the land use management plans being developed in federal areas as well as in areas that have been conveyed (such as native lands).

Historically, the state has not asserted its claims to these rights-of-way unless there was a construction project planned and then funds were used from construction monies to fund the process of asserting claim, which requires BLM approval and may require litigation.

The BLM, DNR, and DOT have recently signed a memorandum of agreement in which the BLM outlines its requirements for the state to prepare maps showing the location of public highways established under the authority of RS 2477.

Since the Memorandum of Agreement was signed, there have been meetings held investigating prior assertions. Apparently back in 1974, the

old Department of Highways did a trails inventory and sent it to the BLM asserting claim. The file at DOT shows a letter from the BLM asking for another copy, but there was no response as to the status of the claims. The DOT is using that trails inventory as a base for their current claim. The BLM is saying the maps used at the time the trails inventory was completed are not adequate to meet the BLMs current mapping requirements.

Some of the issues to be addressed when considering the assertion of the state to rights-of-way across what were public lands during the time that the trail use was established is the reaction of the National Park Service, the native corporations, and any other group who might want to litigate the validity of the claim.

If the state does obtain the rights-of-way, what is the state's legal responsibility for operation and maintenance, road openings and closures, and liability?

In addition, the state has to determine the order of priority for adjudication if any of the claims have to end up in court, and whether or not the state wishes to join in current lawsuits or future lawsuits on behalf of other organizations or persons (such as the Joe Vogler case currently going on),

The documentation currently being required by BLM is costly and time consuming to prepare, and historical documentation will be harder and harder to obtain as time goes by (such as affidavits from old-time users).

Even if the BLM does accept the states claims, it could still be challenged in court by any interested party - i.e., an environmental group, another federal agency (such as the National Park Service as regards ANILCA lands) or perhaps even the state division of parks. In addition to these larger groups, there are groups, at least in Fairbanks, who want trail uses restricted to a particular kind of use, such as dog-sledding, cross-country skiing, etc.

Since there are so many special interests involved, the state has apparently not developed any firm policy toward the resolution of these issues and claims to rights-of-way. I am informed that the Attorney General's office is not interested in getting involved in court proceedings having to do with the state's claims, either.

I have a file containing more in-depth information.

cc: McKie Campbell

Alaska Department of Transportation and Public Facilities

Northern Region

Division of Planning

REVISED STATUTE 2477 RIGHTS-OF-WAY

FILED
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ALASKA

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 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 official 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 these 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 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.

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 or 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 time 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 supporting the date claimed. This 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

Frank

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 historical 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 Road Meeting on August 23, 1984. It also has the support of the DNR Northcentral District Manager, Division of Land and Water Management, Jerry Crossida.

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 cases 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 Acquisition project which has \$95,000 remaining. This money was appropriated by the State Legislature for the purpose of acquiring 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

We recommend that DOT&PF seek a revised program change from the interim legislative committees to use the Bulenberg Trail appropriation for RS 24777 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 historical 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 inter-agency cooperation.

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

DP:dp



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.

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-Charley 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 under 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 disturbing involves Gates of the Arctic National Park. In February, 1984, the Department of Natural Resources sent a letter to NPS stating that, because the route of the Coldfoot Classic Sleddog Race lies on state-claimed R.S. 2477 rights-of-way and on navigable waterways, the organization conducting 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 access 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 state 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 National 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 certain 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 purpose 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 solving this dilemma which is accompanied with full public involvement and the participation of all affected land owners and managers.



United States Department of the Interior

IN REPLY REFER TO

2800 (932)

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

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 occurred all at once. Road maintenance often equals improvement and even construction. When the history of a road is questionable, its 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.



Citizens' Advisory Commission on Federal Areas

119 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 65 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.

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.

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

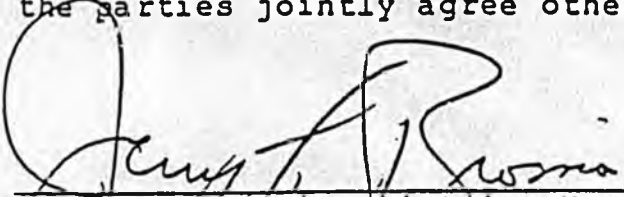
21. Each party agrees that it will be responsible for its own acts and the results thereof and each party shall not be responsible for the acts of the other parties; and each party agrees it will assume to itself risk and liability resulting in any manner under this agreement.

22. Nothing in this MOU is intended to limit agency or individual rights to normal administrative or judicial appeal processes.

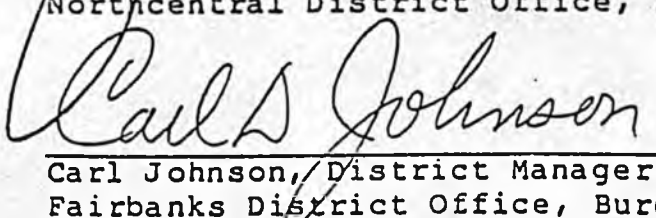
23. Nothing herein is intended to conflict with Federal, State or local laws or regulations. If there are conflicts, this agreement will be amended as soon as practical to bring it into conformance with conflicting laws or regulations.

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.

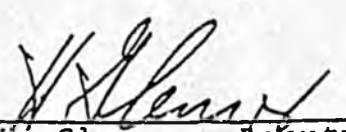
25. The effective date of this agreement shall be from the date of final signature. The agreement shall remain in effect until the parties jointly agree otherwise.



Date 9-28, 1984
Jerry L. Prossia, District Manager,
Northcentral District Office, Alaska Department of Natural Resources



Date 9/28, 1984
Carl Johnson, District Manager,
Fairbanks District Office, Bureau of Land Management



Date 20 Sept, 1984
H. Glenzer, Deputy Commissioner,
Northern Region, Alaska Department of Transportation & Public
Facilities



United States Department of the Interior

IN REPLY REFER TO

2300 (932)

BUREAU OF LAND MANAGEMENT

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

November 23, 1984

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

To: DM's and DSD's

From: State Director, Alaska

Subject: 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 established 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

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.

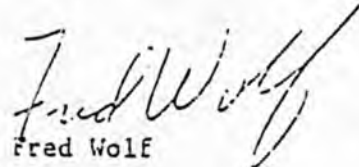
BLM will not specifically reference an R.S. 2477 claim, assertion or notation in the deeds or patents it issues for any claim or entry made under the public land laws, unless the inclusion of a reference to such claim has been agreed to, in writing by all affected parties.

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 substantiate its decision as to disposition of the assertion. However, such action is not required.

Distribution:
D-DSC (D-558A)


Fred Wolf
State Director
Acting



CORPORATE DEVELOPMENT AND
TECHNICAL SERVICES FOR
VILLAGE BUSINESS CORPORATIONS

127 1/2 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 ELM to insert these rights-of-ways in native conveyances. Since ELM 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 ELM'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

Dan Alex
October 23, 1984
Page 2

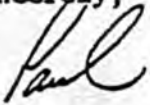
an opportunity for complete adjudication in the proper forum. (Please read their briefing paper closely.) If the RS2477 assertion ends up in the land conveyance, the Corporation receives a clouded title document and faces potentially significant management problems.

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



File: RS 2477
CORPORATE DEVELOPMENT AND
TECHNICAL SERVICES FOR
VILLAGE BUSINESS CORPORATIONS

127 1/2 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

DEPARTMENT OF
NATURAL RESOURCES
JAN 21 1984
COMMISSIONER'S OFFICE
JUNEAU

CC TO MV
Tom H
Sandra Schubert
(Sen. Fahrenkamp
Coc)
Kie Campbell
(Sen. St. Venant
Coc)

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 philosophy 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.

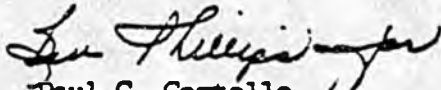
My solution is simple. Revoke the MOU and let the landowners and the State decide in the manner most practical which right is valid and who is responsible for that right. If a right is valid because there is a continuing public use and need, then let the State seek the funds to maintain the right-of-way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

Lavelle Black
Nov. 1, 1984
Page 2

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 Dazz Alex
Briefing Paper
MOU

PCC/bap

Tanana Chiefs Conference, Inc.

Doyen 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/PP'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/PP 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

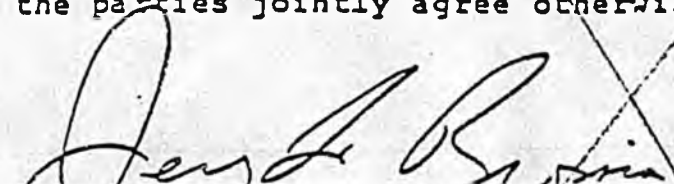
File RS 2477

*Cost
Title*

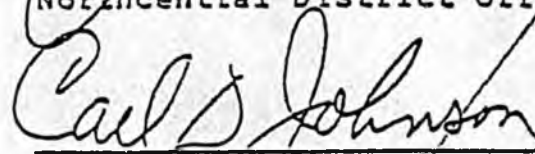
23. Nothing herein is intended to conflict with Federal, State or local laws or regulations. If there are conflicts, this agreement will be amended as soon as practical to bring it into conformance with conflicting laws or regulations.

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.

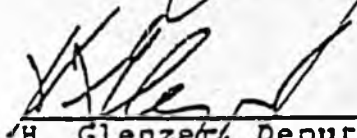
25. The effective date of this agreement shall be from the date of final signature. The agreement shall remain in effect until the parties jointly agree otherwise.



Date 9-28, 1984
Jerry L. Brossia, District Manager,
Northcentral District Office, Alaska Department of Natural Resources



Date 9/28/, 1984
Carl Johnson, District Manager,
Fairbanks District Office, Bureau of Land Management



Date 28 Sept, 1984
H. Glenzer, Deputy Commissioner,
Northern Region, Alaska Department of Transportation & Public
Facilities

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 title 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 District, 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.

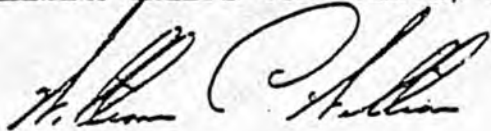
December 21, 1984

Page 3

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 BLM 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 How

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 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 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:

DEPARTMENT OF
NATURAL RESOURCES

JAN 31 1984

COMMISSIONER'S OFFICE
BUREAU

Resolution #2-185
RS 2477 Right-of-Way
Page 2

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


Title President and Chief Executive Officer

Attachments: Memorandum 00-2528, April 8, 1974
Memorandum AK-023-MU5-002, September 28, 1984



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 O. Smith
Signature of Camera Operator

11/24/89
Date

SJR

14

STATE OF ALASKA THE LEGISLATURE

FOUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

SENATE RESOURCES COMMITTEE, 2/25/85, 1:35

MZU
2/25/85

I just talked to David Olsen, Deputy Regional Director for the Fish and Wildlife Service. He has met this morning with representatives of Shumagin Corp. They agreed to the following points:

- 1) Fish and Wildlife will delay any action until March 18th.
- 2) In that interim the people of Sand Point will spread the word of the cattle's availability.
- 3) On March 18, Fish and Wildlife will institute a "culling" operation, killing the old cattle. They will leave at least 90 head of the best stock on the island.
- 4) On August 15, when a barge is available, Fish and Wildlife will assist in moving the remaining cattle to Unga island.

MESSAGE TO THE SENATE

HOUSE

JUNEAU, ALASKA March 6, 1985

MR. PRESIDENT:

The House has passed SJR 14am (Urging the United States Fish and Wildlife Service to postpone the proposed cattle slaughter on Simeonof Island) with the following amendment:

HCS SJR 14(Res), same title

and ~~it is transmitted~~ for consideration.

returned

Concur - ?

2/27/85

19-0

Israel Daken

CHIEF CLERK OF THE HOUSE

Offered: 3/6/85
For Today's Calendar

Original sponsor: Zharoff

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 HOUSE CS FOR SENATE JOINT RESOLUTION NO. 14 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 Urging the United States Fish and Wild-
6 life Service to postpone the proposed
7 cattle slaughter on Simeonof Island.

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

9 WHEREAS cattle have been on Simeonof Island since 1894; and

10 WHEREAS the United States Fish and Wildlife Service has indicated that
11 it plans to kill the cattle on this island; and

12 WHEREAS the people in the communities near Simeonof Island are suffer-
13 ing difficult economic times due to the decline of the fishery stocks; and

14 WHEREAS the people in the communities near Simeonof Island have used
15 the cattle on Simeonof Island as a supplemental food source in the past,
16 and would like to continue to do so in the future; and

17 WHEREAS there are cattle holding pens and loading chutes on Simeonof
18 Island to facilitate removal of the cattle; and

19 WHEREAS the Shumagin Village Corporation desires to transplant the
20 cattle from Simeonof Island to Unga Island, but the Shumagin Village Corpo-
21 ration may require until September 1985 in order to do so; and

22 WHEREAS the slaughter of the cattle would constitute a waste of thou-
23 sands of pounds of beef that could be used by needy Alaskans in the immedi-
24 ate area; and

25 WHEREAS the elimination of the cattle will be very expensive; and

26 WHEREAS the cost of the destruction of the cattle could be used to
27 better advantage to help the Shumagin Village Corporation transplant the
28 cattle to Unga Island;

29 BE IT RESOLVED by the Alaska State Legislature that it respectfully

1 urges the United States Fish and Wildlife Service to postpone its ultimate
2 termination action related to the cattle until at least October 1985; and
3 be it

4 FURTHER RESOLVED that the legislature respectfully urges the United
5 States Fish and Wildlife Service to assist the Shumagin Village Corporation
6 in its effort to transplant the Simeonof Island cattle to Unga Island; and
7 be it

8 FURTHER RESOLVED that the Alaska State Legislature urges the Alaska
9 delegation in Congress to ensure that the United States Fish and Wildlife
10 Service postpones the cattle slaughter on Simeonof Island until at least
11 October 1985.

12 COPIES of this resolution shall be sent to the Honorable Ronald
13 Reagan, President of the United States; the Honorable Donald Hodel, Secre-
14 tary of the Interior; and to the Honorable Ted Stevens and the Honorable
15 Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Repre-
16 sentative, members of the Alaska delegation in Congress.

Introduced: 2/18/85
Referred: Resources

1 IN THE SENATE

BY ZHAROFF

2

SENATE JOINT RESOLUTION NO. 14 am

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

Urging the United States Fish and Wild-

6

life Service to postpone the proposed

7

cattle slaughter on Simeonof Island.

8

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

9

WHEREAS cattle have been on Simeonof Island since 1894; and

10

WHEREAS the United States Fish and Wildlife Service has indicated that

11

it plans to kill the cattle on this island during the week of March 4,

12

1985; and

13

WHEREAS the people in the communities near Simeonof Island are suffer-

14

ing difficult economic times due to the decline of the fishery stocks; and

15

WHEREAS the people in the communities near Simeonof Island have

16

used the cattle on Simeonof Island as a supplemental food source in the

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cattle from Simeonof Island to Unga Island, but the Shumagin Village Corpo-

22

ration needs until September 1985 to establish agreements to do so with the

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13 regional nonprofit corporations that own Unga Island; and

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26

ate area; and

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29

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1 cattle to Unga Island;

2 BE IT RESOLVED by the Alaska State Legislature that it respectfully
3 urges the United States Fish and Wildlife Service to postpone its termina-
4 tion action related to the cattle until at least October 1985; and be it

5 FURTHER RESOLVED that the legislature respectfully urges the United
6 States Fish and Wildlife Service to divert the costs of shooting the cattle
7 on Simeonof Island to helping the Shumagin Village Corporation transplant
8 the Simeonof Island cattle to Unga Island; and be it

9 FURTHER RESOLVED that the Alaska State Legislature urges the Alaska
10 delegation in Congress to do everything in its power to persuade the United
11 States Fish and Wildlife Service to postpone the cattle slaughter on
12 Simeonof Island until at least October 1985.

13 COPIES of this resolution shall be sent to the Honorable Ronald
14 Reagan, President of the United States; the Honorable Donald Hodel,
15 Secretary of the Interior; and to the Honorable Ted Stevens and the
16 Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S.
17 Representative, members of the Alaska delegation in Congress.

Introduced: 2/18/85
Referred: Resources

File
2/26/85
17-0.

1 IN THE SENATE

BY ZHAROFF

2 SENATE JOINT RESOLUTION NO. 14

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 Urging the United States Fish and Wild-
6 life Service to postpone the proposed
7 cattle slaughter on Simeonof Island.

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19 Island to facilitate removal of the cattle; and

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4 tion action related to the cattle until at least October 1985; and be it

5 FURTHER RESOLVED that the legislature respectfully urges the United
6 States Fish and Wildlife Service to divert the costs of shooting the cattle
7 on Simeonof Island to helping the Shumagin Village Corporation transplant
8 the Simeonof Island cattle to Unga Island; and be it

9 FURTHER RESOLVED that the Alaska State Legislature urges the Alaska
10 delegation in Congress to do ^{everything} [whatever is] in its power to persuade the
11 United States Fish and Wildlife Service to postpone the cattle slaughter on
12 Simeonof Island until at least October 1985.

13 COPIES of this resolution shall be sent to the Honorable Ronald
14 Reagan, President of the United States; the Honorable Donald Hodel,
15 Secretary of the Interior; and to the Honorable Ted Stevens and the
16 Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S.
17 Representative, members of the Alaska delegation in Congress.

amendment that may be offered
by Ziegler - I don't think it
makes any difference one way
or another.

17-0

/

SENATE AMENDMENT

By Senator Ziegler

To: SJR 14 SENATE BILL No. _____

To: _____ HOUSE BILL No. _____

PAGE:

LINE:

2
2

10
10

Delete "whatever is"
Insert "everything"

MEL
2/25/85

I just talked to David Olsen, Deputy Regional Director for the Fish and Wildlife Service. He has met this morning with representatives of Shumagin Corp. They agreed to the following points:

- 1) Fish and Wildlife will delay any action until ~~the~~ March 18th.
- 2) In that interim the people of Sand Point will spread the word of the cattle's availability.
- 3) On March 18, Fish and Wildlife will institute a "culling" operation, killing the old cattle. They will leave at least 90 head of the best stock on the island.
- 4) On August 15, when a barge is available, Fish and Wildlife will assist in moving the remaining cattle to Unga island.

bum steer

horns of a dilemma

our committee head the ~~the~~ resolution
and mooved it out

UN

When this resolution was referred to the Resources Committee we realized that this was a difficult problem and that we were apt to find ourselves on the horns of a dilemma. However, we did not hide from the problem. In seeking advice on the problem, we received a few bum steers, but we remained uncowed and did not let ourselves be stampeded.

We mooved the resolution out of committee and it is now before the full Senate. I hope that the members will realize that this is no bull and will vote for this measure.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK KALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate Committee on Resources

M E M O R A N D U M

February 25, 1985

TO: All Members
Senate Resources Committee

FROM: Staff
Senate Resources Committee. *WEL*

RE: SJR 14 Urging the United States Fish and Wildlife Service to postpone the proposed cattle slaughter on Simeonof Island.

Wild cattle live on thirteen islands which are part of the eastern Aleutian Chain. Three of these, Simeonof, Caton, and Chernabura, are part of the Alaska Maritime National Wildlife Refuge. Cattle have been on Simeonof Island since 1894, and on the other two islands since the early 1960's.

The Fish and Wildlife Service, which manages the refuge, feels the cattle are destroying important waterfowl habitat. Since 1982, Fish and Wildlife has been trying to remove the cattle from the refuge. They first tried to sell them, but that was only partly successful. In July of last year, the islands were opened to the unrestricted taking of cattle. The Shumagin Village Corporation expressed an interest in removing cattle from Simeonof Island and was given until December 10, 1984 to submit a written plan to do so.

The Shumagin Corporation does not feel it can move the cattle until September of this year. The Fish and Wildlife Service currently plans to shoot all cattle on the three islands, commencing on March 4th (one week from today).

SJR 14 requests that the cattle slaughter be delayed until at least October 1985. Enclosed in this packet is a report by the House Research Agency and an exchange of letters between the Shumagin Corporation and the Fish and Wildlife Service.

Faint, illegible text at the top of the page, possibly bleed-through from the reverse side.

SEN. STURGULEWSKI



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

December 12, 1984

MEMORANDUM

TO: Representative Adelheid Herrmann

FROM: Jonathan Sherwood
Legislative Analyst

RE: Problems with Cattle in the Alaska Maritime National Wildlife
Refuge
Research Request C5-055

The U.S. Fish and Wildlife Service plans to eliminate cattle from the Alaska Maritime National Wildlife Refuge. Deborah Greenberg of your staff requested that we investigate the problems leading to the proposed elimination of cattle. We were also asked to provide background information on cattle ranching in the Aleutian Islands. We have contacted the U.S. Fish and Wildlife Service, the Alaska Department of Fish and Game, the Shumagin Village Corporation, and several agencies involved with land management or agriculture in Alaska to provide the following information.

The Removal of Cattle from the Alaska Maritime Refuge

The U.S. Fish and Wildlife Service presently allows individuals to capture or kill cattle on Simeonof, Caton, and Chernabura Islands. These islands are part of the Alaska Maritime National Wildlife Refuge and are managed by the Fish and Wildlife Service. Prior to 1981, these islands were jointly managed by the Fish and Wildlife Service and the Bureau of Land Management (BLM).

At approximately the same time joint management of the islands was terminated, the BLM permits which allowed cattle to graze on these islands expired. The Fish and Wildlife Service did not renew the permits. Ed Bailey, a biologist for the Fish and Wildlife Service, stated that the BLM had informed permit holders in the early 1970's that it did not intend to renew the permits. The cattle became the responsibility of the Fish and Wildlife Service because permit holders did not remove the cattle when their permits expired. Although it is the permit holder's responsibility to remove cattle when a permit expires, Mr. Bailey explained that it was not practical for the Fish and Wildlife Service to enforce this requirement, as it is expensive to remove the cattle and it is unlikely that any of the permit holders have the financial resources to do so.

Representative Herrmann
December 12, 1984
Page Two

History of Cattle on the Islands. According to Ed Bailey, the cattle on Caton and Chernabura Islands were put there as a result of grazing permits issued by the BLM in the early 1960s. Cattle have been on Simeonof Island since 1894. Both Mr. Bailey and Tom Early, Acting Director of the refuge, stated that the cattle on the islands have never been properly managed. Typically, cattle were brought to the islands and left to graze without supervision. No effort was made to ensure adequate winter pastures by preventing cattle from overgrazing. It is the consensus of most of the individuals I contacted that the cattle on these islands have become wild.

One result of the lack of management is that cattle populations on Simeonof Island reached levels far above the maximum established by the BLM for its grazing permits. The permit for Simeonof Island allowed a maximum of less than 300 cattle; at one point, it was estimated that more than 700 cattle were on the island. According to Delon Brown, with the U.S. Department of Agriculture, the cattle populations on islands in this area can vary greatly, depending on the harshness of the winter and spring seasons.

Tom Early stated that none of the cattle operations on these islands had ever been very profitable. He stated that no cattle had ever been taken from Chernabura by permit holders and only a very few cattle had been taken from Caton. According to Ed Bailey, the permit holder on Simeonof attempted to sell his permit on several occasions; each time the purchaser eventually defaulted on his payments and the permit holder reclaimed the permit. The viability of cattle operations in the region is discussed in a later section of this memorandum.

From 1982 until last July, the Fish and Wildlife Service made the cattle on these islands available for sale. According to Tom Early, only a few individuals attempted to take cattle from the islands under this removal program. Mr. Early was aware of three occasions on which someone posted the necessary bond to take cattle from the islands and only one attempt which was successful. This success came when about 300 head of cattle were removed from Simeonof Island.

In July of this year, the Fish and Wildlife Service began allowing the unrestricted taking of cattle from the islands. Although the open taking period officially ended in October, Mr. Early stated that anyone interested in taking cattle from the islands is still encouraged to do so. In fact, when the Shumagin Corporation expressed an interest in taking a large number of cattle from Simeonof Island after the October deadline, the Fish and Wildlife Service gave the corporation until December 10 to submit a plan for removing the cattle.

Representative Herrmann
December 12, 1984
Page Three

Tom Early was uncertain as to how many cattle remain on the three islands. While it is believed that about 350 cattle remained on Simeonof after the 300 cattle were taken under the sale program, the Fish and Wildlife Service has not yet assessed the impact of making the cattle available to the general public without charge. One estimate made in October of this year placed the number at about 600 for all three islands.

To date, it appears that the public taking of cattle has not involved removal of live cattle from the island; rather, the cattle are shot and the meat is removed by boat or plane. Mr. Early is aware of Coast Guard personnel taking some cattle and believes that passing fishermen have probably taken cattle from the islands as well. In addition, residents of nearby islands have taken some cattle. Dick Jacobson, President of Shumagin Corporation, stated that at least twenty cattle have been taken by Sand Point residents in the last two months. Lance Trasky, with the Department of Fish and Game, was also aware of residents from communities in the vicinity taking cattle.

There are several problems with removing live cattle from the three islands. Chernabura and Caton are described by Mr. Early as very rugged with none of the structures, such as cattle pens and loading chutes, which might facilitate rounding up the cattle. In addition, the cattle are wild and are dispersed throughout each of the islands. According to Dick Jacobson, the cattle can outrun horses on the tundra and airplane herding is difficult.

Simeonof has a good harbor and the cattle pens and loading chutes which make removal of live cattle more practical. However, many of the cattle have already been removed from this island. According to Mr. Jacobson, the cattle remaining are likely to be more difficult to round up, as the most accessible cattle have already been taken.

Reasons for Removing the Cattle. According to Mr. Early, cattle represent a threat to waterfowl habitat on these islands. There has been heavy erosion on parts of these islands; the cattle eat the cover and trample out trails which erode under the constant rain. Erosion is a particular problem in some beach areas, as the cattle feed on beach grasses and kelp in the winter. According to Mr. Bailey, desertization of the beach land has already occurred on some parts of the island.

Lance Trasky, with the Alaska Department of Fish and Game's Habitat Protection Division, mentioned that cattle can also trample the nests of waterfowl that reside in the beach areas where the cattle seek their winter forage. Ed Bailey stated that the presence of cattle on these islands increases the threat to waterfowl from foxes, which were imported to several islands in the area to encourage a fur industry. According

Representative Herrmann
December 12, 1984
Page Four

to Mr. Bailey, the cattle remove cover, making the waterfowl more accessible to foxes; carcasses of starved cattle also provides more food for foxes, increasing the fox population and thus increasing their impact on waterfowl.

According to Ed Bailey, the cattle are not threatening any endangered species of waterfowl on these islands. However, Mr. Bailey identified Simeonof as the island having the best potential for waterfowl habitat on the south side of the Alaska Peninsula. Mr. Bailey has spent several years studying the habitat in the region and has personally visited all of the islands in the region. He formerly resided in Cold Bay while working for the U.S. Fish and Wildlife Service out of the Izembeck Refuge.

It should be noted that the representatives of wildlife management agencies with whom I spoke perceived a much greater impact to the environment from cattle than those individuals involved in agriculture or other areas of land management. For example, Margaret Hayes, Manager of the Southcentral Land District for the Division of Land and Water Management, was not aware of overgrazing problems on Chirikof Island, which is managed by the State, while Mr. Early and Mr. Bailey characterized it as seriously overgrazed.

Both Ms. Hayes and Tom Hawkins, Director of Land and Water Management, stated that the most typical problem with cattle leases is underutilization of the resource, not overgrazing. In addition, a 1983 report on the range condition of Simeonof Island "indicated only the beach wildrye plant communities were in poor condition, less than 5% of the entire grazing area."¹

Dick Jacobson, President of the Shumagin Corporation, has visited Simeonof Island four times in the last two months and does not believe that the cattle are destroying the wildlife habitat. While he acknowledges that the cattle had overpopulated the island at one point, he does not believe this problem will continue now that many cattle have been removed and residents of the area have begun taking the cattle for food. Delon Brown, with the U.S. Department of Agriculture in Palmer, stated that while he did not have knowledge of the specific situation on the islands in question, he found it difficult to imagine cattle causing serious damage to the habitat.

¹Jay D. McKendrick, "Alaska's Range Livestock Potential," Alaska Department of Commerce and Economic Development, Division of Finance and Economics, Research Monograph Series No. 84-0010, p. 3.

Representative Herrmann
December 12, 1984
Page Five

While it is likely that individuals outside of habitat management are assessing the impact of cattle on the environment with different standards than habitat biologists, it would appear that the damage done by cattle may not be so severe as to present concerns to individuals whose primary focus of concern is not waterfowl habitat.

Current Status of the Cattle. The current plans of the U.S. Fish and Wildlife Service are to shoot any cattle which remain on the three islands this spring. According to Tom Early, the public has had three years to remove cattle from the island; the Fish and Wildlife Service considers this an adequate opportunity to take the cattle.

The Shumagin Corporation is attempting to develop a plan for removing some of the cattle from Simeonof Island to Unga Island. According to Dick Jacobson, the corporation is not interested in going into the cattle business, but hopes to move them inexpensively to preserve a food resource for the local population. When the cattle were owned by private individuals, the residents of nearby islands did not take many cattle, because of the expense of purchasing the cattle and the distance involved in getting to the islands. However, Mr. Jacobson explained that the local economy has slumped with the decline of the king and tanner crab. This situation, combined with the fact that individuals no longer have to buy the cattle from the permit holder, has apparently resulted in an increase in the local residents use of the cattle for food.

Mr. Jacobson cited several difficulties in complying with the U.S. Fish and Wildlife Service request for a written cattle-removal plan by December 10, 1984. There are several land owners on Unga Island whose permission must be obtained before cattle can be moved there; there are only two barges available to move the cattle and scheduling their time is a problem. In addition, rounding up the cattle is likely to be a difficult task. Although the U.S. Fish and Wildlife Service has offered to donate the use of its helicopters for the cattle removal effort, Mr. Jacobson must still coordinate the barge use, the Fish and Wildlife helicopters, and the local labor, in addition to securing the necessary permission from landowners on Unga.

According to Tom Early, the Fish and Wildlife Service would like any further attempts to remove cattle from the island completed by February. At this time, there are no plans to salvage any of the meat from the cattle if they are shot in place. As noted earlier, the terrain is difficult and the cattle are not in any central location. However, Mr. Early stated that if the Shumagin Corporation was interested in taking out the meat from the cattle, the Fish and Wildlife Service would be willing to coordinate the cattle hunts with those activities.

Representative Herrmann
December 12, 1984
Page Six

Cattle Ranching in the Aleutians

Cattle are located on several islands south of the Alaska Peninsula and on the eastern Aleutian Chain. According to Delon Brown, who compiles an annual grazing report for the U.S. Department of Agriculture, there are cattle on Akun, Akutan, Caton, Chernabura, Cherni, Deer, Dolgoi, Bird, Sanak, Simeonof, Unalaska, Unmak, and Wosnesenki Islands. In addition, there are cattle on Kodiak and several of its surrounding islands. As of January 1, 1984, there were slightly more than 4,800 cattle in the region, including the Kodiak area.

Virtually everyone with whom I spoke stated that cattle ranching in the Aleutians is a marginal enterprise at best. In some locations, cattle are slaughtered sporadically, and little attempt to properly manage the cattle occurs. Delon Brown cited the Chenofski ranch on Unalaska as probably the best managed ranch in the Aleutians. On at least one island, Unmak, cattle production is combined with sheep ranching.

While compiling the grazing reports, Mr. Brown stated that it is often a task just determining who owns which cattle on the islands. Some of the cattle in the area are owned; some are not. According to Mr. Brown, barges with cattle occasionally have broken down, put cattle off on an island, and never returned to collect them. The land on which cattle graze includes State, federal, and Native lands.

Cattle production for beef involves three phases:

"the cow-calf phase where calves are sold at weaning, the grower phase where weaned calves are grown to about 750 pounds, and the finishing phase where feeders weighing about 750 pounds are put into a feedlot and fattened to about 1,050 pounds."²

For the first two phases of beef production, the Aleutians have a significant advantage over mainland Alaska cattle ranching in the presence of year-round grazing. Ranchers in the Railbelt may have to provide cattle with winter feed for up to seven months. In the Aleutians, cattle can graze on beach grasses and kelp through the winter months. Although grazing appears to be quite good on many islands in the Aleutians, several studies have noted a lack of research on the capacity and productivity of Aleutian ranges.

The final, feedlot, phase however, requires considerable amount of grain, which is not available locally. To support this phase, grain

² Alaska Department of Commerce and Economic Development, An Economic Assessment of Alaskan Agriculture, December 1983, p. 15.

Representative Herrmann
December 12, 1984
Page Seven

would have to be shipped out to the Aleutians and the cattle would then have to be shipped to market. Cattle can also be sold grass fattened without the finishing phase; however, this takes longer and the meat, which is considered to be of lower quality as finished beef, sells for less. A 1974 study by the Rural Development Council identified a potential market for grass-fattened beef in the boned and frozen, manufactured beef industry, although later studies addressing cattle ranching in Alaska have not mentioned this possibility.³

The primary hindrance to the cattle industry in the Aleutians appears to be its distance from potential beef markets and the high cost of transportation in and out of the region. This reason was cited by several studies and many of the individuals I contacted as the reason the cattle industry has never developed in the Aleutians and the Alaska Maritime islands. High transportation costs add to both the cost of bringing supplies and feed in and shipping the cattle out. These costs may be prohibitive; even outside Alaska, cattle ranching does not appear to be a highly profitable activity. One report notes that the profitability of ranching in Western states has always been slim.⁴

* * *

I hope this information is of use to you. There are several reports to which we have access that briefly discuss the potential for a cattle industry in the Aleutians; we could provide you with the appropriate excerpts if you so desire. Unfortunately, I was unable to locate any thorough discussion of current cattle ranching activities in the area. If you have any further questions, or if we can be of further assistance to you, please do not hesitate to contact us.

JS

³ Alaska Rural Development Council, Alaska's Agricultural Potential, March 1974, p. 128.

⁴ Jay D. McKendrick, "Alaska's Range Livestock Potential," Alaska Department of Commerce and Economic Development, Division of Finance and Economics, Research Monograph Series No. 84-0010, P.4.

JAN 19 1985

Shumagin Corporation

P.O. Box 174
Sand Point, Alaska 99661

(907) 383-3525

January 14, 1985

Mr. Bob Jacobsen
U.S. FISH & WILDLIFE SERVICE
1011 E. Tudor Rd.
Anchorage, Alaska 99503

Dear Mr. Jacobsen;

This letter is in regard to our phone conversation on January 14, 1985. The following is a brief outline of our proposal for removing the cattle from Simeonof Island and our progress so far:

1. To obtain permission from all 12 corporations involved in the ownership of Unga Island which is where we intend to place the cattle.

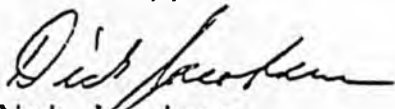
Enclosed are copies of three letters of non-objection obtained so far. We foresee no problems in getting permission from the remaining corporations, and expect to have this completed within the next couple of weeks.

2. Arrange for transportation and collection of cattle by March 31, 1985. Actual moving to begin by September 1, 1985, and to be completed by September 30, 1985.

Fish and Wildlife has offered us the possible use of a helicopter for assisting in the transport of some of the cattle. We have also been in contact with two parties who have landing barges which might also be used. We have yet to see these crafts, but plan to do so soon to determine if they would be suitable for our use.

We would like to thank you for your patience and understanding in our gradual progress in this matter. We are making every effort to get this project organized and will keep you informed of our progress.

Sincerely,



Dick Jacobsen
President

cc. Rep. Adelheid Herrmann
Congressman Don Young
Senator Ted Stevens



United States Department of the Interior

FISH AND WILDLIFE SERVICE
1011 E. TUDOR RD.
ANCHORAGE, ALASKA 99503

REPLY REFER TO:

AWR/0942P

FEB 6 1985

Mr. Dick Jacobsen, President
Shumagin Corporation
P.O. Box 174
Sand Point, Alaska 99661

Dear Mr. Jacobsen:

On January 31, 1985, we advised you of our decision to proceed with destruction of all remaining cattle on the Simeonof, Chernabura and Caton Island units of the Alaska Maritime National Wildlife Refuge during the week of February 4, 1985. We encouraged the Shumagin Corporation to participate in either the removal of live cattle or salvage of meat.


We were subsequently contacted by Mr. Lamar Cotton, City Manager, and Jack Foster, Mayor, City of Sand Point, Representative Adelaide Herrmann, and a representative of Governor Sheffield's office and asked to postpone our operation. We were told that you and many others from the Sand Point community were crab fishing and wouldn't have time to respond to our invitation within the time provided. The livestock must be removed before the next vegetative growing season (or as early in March 1985, as possible) to stop the continued damage that is occurring to refuge resources from grazing and trampling. However, we are also concerned that as many of the remaining livestock as possible be utilized. Therefore, we agreed with the request, and have rescheduled our operation for the week of March 4, 1985, weather permitting.

In an effort to accomplish wilderness management objectives and facilitate the salvage of meat, we are prepared to authorize you to bring up to five two-, three-, or four-wheeled, low ground pressure tired all-terrain vehicles, or snowmobiles (provided there is adequate snow cover), for use on Simeonof Island. The use of such vehicles is normally prohibited in designated wilderness (such as on Simeonof and Chernabura), but given the emergency nature of this livestock removal operation, from the standpoint of resource protection needs, we are authorizing their use under the supervision of refuge personnel during the duration of removal activities.

If you wish to try to take some of the animals off Simeonof live, we are still prepared to assist your gathering efforts with the helicopter that we'll have on the island.

We encourage you to work directly and promptly with Refuge Manager Martin and his staff, to coordinate your salvage efforts. He will keep your office currently informed about our plans.

Sincerely,


Regional Director

cc: Lamar Cotton
Jack Foster
Representative Adelaide Herrmann
Senator Ted Stevens
Congressman Don Young
Senator Frank Murkowski
Director, USFWS
Chief, Division of Refuge Management
Governor Bill Sheffield

Introduced: 2/18/85
Referred: Resources

1 IN THE SENATE

BY ZHAROFF

2

SENATE JOINT RESOLUTION NO. 14

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

Urging the United States Fish and Wild-

6

life Service to postpone the proposed

7

cattle slaughter on Simeonof Island.

8

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

9

WHEREAS cattle have been on Simeonof Island since 1894; and

10

WHEREAS the United States Fish and Wildlife Service has indicated that

11

it plans to kill the cattle on this island during the week of March 4,

12

1985; and

13

WHEREAS the people in the communities near Simeonof Island are suffer-

14

ing difficult economic times due to the decline of the fishery stocks; and

15

WHEREAS the people in the communities near Simeonof Island have

16

used the cattle on Simeonof Island as a supplemental food source in the

17

past, and would like to continue to do so in the future; and

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WHEREAS there are cattle holding pens and loading chutes on Simeonof

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Island to facilitate removal of the cattle; and

20

WHEREAS the Shumagin Village Corporation wants to transplant the

21

cattle from Simeonof Island to Unga Island, but the Shumagin Village Corpo-

22

ration needs [until ^{time} September 1985] to establish agreements to do so with the

23

13 regional nonprofit corporations that own Unga Island; and

24

WHEREAS the slaughter of the cattle would constitute a waste of thou-

25

sands of pounds of beef that could be used by needy Alaskans in the immedi-

26

ate area; and

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WHEREAS the elimination of the cattle will be very expensive; and

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WHEREAS the cost of the destruction of the cattle could be used to

29

better advantage to help the Shumagin Village Corporation transplant the

1 cattle to Unga Island;

2 BE IT RESOLVED by the Alaska State Legislature that it respectfully
3 urges the United States Fish and Wildlife Service to postpone its termina-
4 tion action related to the cattle until at least October 1985; and be it

5 FURTHER RESOLVED that the legislature respectfully urges the United
6 States Fish and Wildlife Service to divert the costs of shooting the cattle
7 on Simeonof Island to helping the Shumagin Village Corporation transplant
8 the Simeonof Island cattle to Unga Island; and be it

9 FURTHER RESOLVED that the Alaska State Legislature urges the Alaska
10 delegation in Congress to do whatever is in its power to persuade the
11 United States Fish and Wildlife Service to postpone the cattle slaughter on
12 Simeonof Island [until at least October 1985]

13 COPIES of this resolution shall be sent to the Honorable Ronald
14 Reagan, President of the United States; the Honorable Donald Hodel,
15 Secretary of the Interior; and to the Honorable Ted Stevens and the
16 Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S.
17 Representative, members of the Alaska delegation in Congress.