

**MEMORANDUM OF UNDERSTANDING**

**Between  
The State of Alaska  
and  
The Department of the Interior  
On Right-of-Way Acknowledgment**

This Memorandum of Understanding (MOU) is entered into between the U.S. Department of the Interior and the State of Alaska on the \_\_\_ day of \_\_\_\_\_ 2003.

**WHEREAS,**

1. In a Report to Congress prepared in June of 1993, the Department of the Interior explained that unresolved conflicts over the status of rights-of-way created pursuant to Revised Statute 2477 were creating a continuing cloud on Federal agencies' ability to manage federal lands.
2. On August 7, 2002, a bipartisan group of eight western governors wrote urging the Department of the Interior to bring finality to R.S. 2477 disputes in a cooperative manner.
3. Disputes involving R.S. 2477 rights-of-way have generated numerous expensive and inconclusive federal court lawsuits that have left numerous questions concerning the ownership status of R.S. 2477 rights-of-way unresolved; the high cost of this litigation has made it difficult for states to assert their rights and for conservation groups to assert their interests.
4. The Department of the Interior has traditionally approached R.S. 2477 issues by trying to define the precise legal limits of the original statutory grant.
5. The grant of R.S. 2477 rights-of-way was realized in Alaska by means markedly different from other states and territories. These differences stem from significant distinguishing circumstances that include physical environmental challenges due to remoteness, permafrost, and arctic and sub-arctic terrain features as well as traditional historic use patterns, such as the fact that historically, and uniquely, commercial transport in rural areas of Alaska was concentrated in winter months when waterways and saturated soils are frozen hard.
6. Recognition of the R.S. 2477 grant in Alaska, due to the state's distinctive history, climate, use patterns, and vastness, requires that BLM and the State of Alaska develop procedures and definitions that may not be useful in

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other states and territories.

7. The rights-of-way in which the State of Alaska asserts claims include many rights-of-way of continuing importance to rural transportation.
8. Rights-of-way granted under R.S. 2477 are vested property rights that cannot be eliminated or diminished without due process. However, the statutory grant of the rights-of-way did not require the issuance of an identifying record, such as a patent. The resulting uncertainty surrounding the identity and scope of R.S. 2477 rights-of-way has created unnecessary difficulties in federal, state and local transportation and land use planning decisions.
9. The State of Alaska has spent considerable time and substantial resources to gather information about right-of-way claims and is prepared, if necessary, to litigate those claims.
10. Federal and state land managers desire to put disputes surrounding R.S. 2477 to rest and move toward an approach to land management that emphasizes cooperation.

**NOW, THEREFORE, THE PARTIES STIPULATE AND AGREE AS FOLLOWS:**

1. The Department shall implement a Right-of-Way Acknowledgment Process (Acknowledgment Process) to acknowledge the existence of certain R.S. 2477 rights-of-way on Bureau of Land Management land within the State of Alaska, as a method of/demonstrating/resolution of the R.S. 2477 grant in a manner that recognizes Alaska's unique climate, topography, use patterns, and history. This pilot project will allow the parties to gain experience that could be made applicable to other federal lands. The Acknowledgement Process is further described in, and subject to the terms and conditions of, this MOU.
2. For purposes of this MOU and for working through issues unique to Alaska's realization of the R.S. 2477 grant, the State shall within one month of signing this MOU provide BLM with case reports concerning 10 of the following 14 rights-of way, as described in Attachment A:

RST 9	Coldfoot-Chandalar Lake Trail
RST 318	Paxson-Denali
RST 368	Haycock-Candle
RST 1373	Willow Lake Trail

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RST 1539	Mae West Lake Trail
RST 1540	Lost Cabin Lake Trail (Atlasta House)
RST 198	Susitna-McDougal Trail
RST 280	Chatanika-12 Mile Summit Trail
RST 38	Tramway Bar Trail
RST 110	Girdwood-Eagle River Trail
RST 130	Lillywig Creek Winter Sled Trail
RST 789	Ketchumstuck Winter Trail
RST 792	Boundary Landing Strip Trail
RST 1537	Arizona Lake Trail

3. To facilitate resolution of issues related to Alaska's unique climate, topography, use patterns, and history, the state recognizes that none of the potential R.S. 2477 trails on the above list are:
  - a. rights-of-way that lie within Congressionally designated Wilderness Areas;
  - b. rights-of-way that lie within the boundaries of any unit of the National Park System;
  - c. rights-of-way that lie within the boundaries of any unit of the National Wildlife Refuge System; or
  - d. rights-of-way that are administered by a federal agency other than the Department of the Interior, unless that federal agency consents to the inclusion of the right-of-way in the Acknowledgement Process.
  
4. Within one month of receiving the case report for a candidate right-of-way from the State, BLM will inform the State if any additional information is needed. Each eligible right-of-way submitted shall have the following characteristics:
  - a. the right-of-way existed prior to the enactment of FLPMA in 1976;
  - b. the right-of-way can be identified by an appropriate land description;
  - c. the existence of the right-of-way prior to the enactment of FLPMA is documented by information sufficient to support a conclusion that the right-of-way meets the legal requirements of a right-of-way granted under R.S. 2477; this information may include, but is not limited to, photographs, affidavits, surveys, government records concerning the right-of-way, information concerning or information reasonably inferred

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from the right-of-way's current conditions; and

- d. the right-of-way is a public highway, as defined by state law; is available for those uses permitted by state law; and has not been abandoned as determined by state law. In particular, permissible ancillary uses of a right-of-way, such as turnouts, rest areas, and utility functions (cables, telephone wires, etc.), shall be permitted in accordance with state law.
5. The Acknowledgment Process referenced in this MOU that the Department shall use to acknowledge eligible rights-of-way is FLPMA's recordable disclaimer of interest process. See 43 U.S.C. 1745; 43 C.F.R. subpart 1864. The recordable disclaimer of interest process provides a clear statutory basis for resolving claims and provides an opportunity for public notice and participation. The Alaska State Director of the Bureau of Land Management will issue a recordable disclaimer of interest if the requirements of the applicable statutes and regulations, and the terms of this MOU, have been satisfied.
6. The BLM Alaska State Director will work cooperatively with the State of Alaska in making a decision whether to issue a disclaimer under this MOU, and will make a decision on each of the ten R.S. 2477 routes submitted by the state within six months of the state's submission of a completed application.
7. The Bureau of Land Management shall apply the following standards in determining whether to issue a recordable disclaimer:
  - a. The lands involved must have been public lands, not reserved for public uses, at the time the right-of-way was accepted.
  - b. Acceptance of the R.S. 2477 offer shall be determined under state law.
  - c. Construction may be demonstrated, among other means, by removal of high vegetation, moving large rocks, installation of water bars, corduroy, maintenance work, ice bridges, or public use over time for the intended or available mode of transportation, including, but not limited to, foot, horse, dog sled, snowmachine, off road vehicle, or other vehicular traffic.
  - d. The requirement that the right-of-way is public may be satisfied by a showing of the expenditure of construction or maintenance money by an appropriate public body, statements by an appropriate public body that

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the highway was and is a public highway, inclusion of a highway in a state, borough or municipal road system, or evidence of public use.

- c. Abandonment of a right-of-way shall be determined in accordance with state law.
8. By signing this agreement, the Department recognizes that right-of-way width and ongoing maintenance levels are essential aspects of right-of-way management. Therefore, the scope of a right-of-way that the Department disclaims, including its width and allowable ancillary uses, shall be determined in accordance with state law.
9. After the Department issues a recordable disclaimer of interest for an acknowledged right-of-way, the State may want to increase the right-of-way width beyond the already disclaimed right-of-way. In cases where the State wishes to alter a right-of-way that is subject to the Acknowledgment Process in a way that is beyond the boundary or width of the acknowledged right-of-way, it will do so only after notifying BLM of its intentions and giving BLM an opportunity to determine that no permit or other authorization is required under federal law; or, if a permit or other authorization is required, securing such a permit or other authorization, issued in compliance with any applicable law, including requirements of Title V of FLMMPA, ANILCA and the National Environmental Policy Act. In the event a permit is deemed necessary, the Department will make its best effort to process requests for access under Title V of FLPMA promptly and cooperatively.
10. In recognition of the unique circumstances in Alaska, the Department hereby declares that the requirements for determinations under the "Interim Departmental Policy on Revised Statute 2477 Grant of Right-of-Way for Public Highways; Revocation of December 7, 1988 Policy" dated January 22, 1997, shall be inapplicable to R.S. 2477 assertions in Alaska.
11. The submission of a right-of-way to the Acknowledgment Process does not prejudice the State's valid existing rights regarding that right-of-way under the law.
12. This MOU shall not be used to obligate or commit funds or as the basis for the transfer of funds.
13. The routes listed in this MOU shall not be construed as an exhaustive list of R.S. 2477 rights-of-way that may traverse land managed by the Department of Interior or any other party.

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14. This MOU shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the State of Alaska, the United States, their agencies, their officers, or any other person. This MOU shall not be construed to create any right to judicial review involving the compliance or noncompliance of the State of Alaska, the United States, their agencies, their officers, or any other person with the provisions of this MOU.

_____ Gale A. Norton Secretary United States Department of the Interior	_____ Date	_____ Frank M. Murkowski Governor State of Alaska	_____ Date
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