

State of Alaska Proposed Agreement on R.S. 2477 Right Of Way Claims
Threatens To Turn Hiking Trails Into Highways
Threatens National Parks, Wildlife Refuges and Public Input

Alaska's Proposal Attempts to Turn Trails Into Highways

The August 2003 proposed agreement (or Memorandum of Understanding (MOU)) drafted by the State of Alaska, which would bind the State and the US Department of the Interior, does not apply to claims that are highways or major routes constructed and maintained to a certain safety standard. The fourteen trails listed in the proposal include winter dog-sled trails and footpaths. In fact, the MOU proposes new standards that would dramatically expand, what can be given away as a "highway" in several ways:

- The draft MOU practically eliminates the statutory requirement that to qualify as an RS 2477 right of way, a highway must be "constructed." In place of construction, the draft MOU requires only demonstration of public use on the route by foot, horse, dog sled, or snowmobile. This section of the MOU contradicts arguments the Bush Justice Department made in the federal court last year that even "mere passage of vehicles" cannot by itself constitute construction of a highway. Indeed, Alaska's proposal even goes well beyond mere passage of vehicles stating that "construction may be demonstrated, among other means, by . . . public use over time for the intended or available mode of transportation, including. . . foot . . . traffic."
- Instead of requiring that the route be an established public highway, as required by the express terms of RS 2477, the draft MOU provides that a trail can be transformed into a public highway by "statements by an appropriate public body that the highway was and is a public highway"
- In addition to the incredibly weak standards already spelled out in the draft, the proposal attempts to leave the door wide open to virtually unlimited claims that could crisscross the entire state. Despite the fact that RS 2477 was a federal law granting rights across federal land, Alaska's proposed MOU provides "acceptance of the R.S. 2477 offer shall be determined under state law." Alaska's state law interpretation of RS 2477 have been so expansive that it has declared seldom-used hunting trails and may even include every section line in the state.

The Draft MOU Does NOT Protect Alaska's National Parks and Other National Treasures.

- Although none of the 14 trails listed in the proposed MOU lie within National Parks, National Wildlife Refuges and designated Wilderness Areas, the MOU states clearly that this is a "pilot project to allow the parties to gain experience that could made applicable to other federal lands."
- The State of Alaska did not abandon ANY claims in National Parks, National Wildlife Refuges or designated Wilderness Areas in this agreement, but rather explicitly states it would like to apply the proposal to "other federal lands".
- By selecting 14 trails that include dog sled and footpaths, the state is attempting to weaken the standards enough to open the door to the thousands of bogus claims in National Parks, National Wildlife Refuges and designated Wilderness Areas.
- ORV groups or others also can assert claims to all of these routes in federal court. In fact because this agreement lowers the standards for determining valid road claims, it could make it easier for others to prevail in claims for roads through environmentally sensitive areas.

The Draft MOU Does NOT Resolve a Long Standing Controversy or Avoid Litigation.

- The State is not bound by the determinations made under this MOU and can challenge them in court. The State can ignore the MOU process altogether and go straight to court. In fact the State says specifically in the MOU that “it is prepared, if necessary, to litigate claims.”

The Draft MOU Does NOT Address Alaska’s Legitimate Transportation Needs

- Alaska is unique and therefore may not have as many roads that qualify under RS 2477 since less highway construction took place here than in other Western states. This doesn’t mean, however, that the state can distort the clear statutory requirements of RS 2477.
- Congress recognized and provided for Alaska’s unique transportation and access needs in Title XI of the Alaska National Interests Lands Conservation Act. In addition, Title V of the Federal Land Policy and Management Act provides reasonable modern procedures to address the State’s access needs.

The Draft MOU Does NOT Stop Claimed Trails from Being Turned into Real Highways.

- The draft MOU does not prohibit the development, realignment or improvement of claimed routes, and it does not lay out a process by which the public would have any opportunity to participate in determining whether a permit or other authorization is required to change the character, alignment or use of these routes.
- Alaska’s proposal would allow the State to expand at will and without restriction ancillary uses on the routes including utility corridors, rest areas and turnouts.
- The draft MOU fails to require any review of environmental impacts before such road upgrading and development could occur.

The Draft MOU Relies on an Illegal Process – the Recently Amended ‘Disclaimer Rule.’

- The recordable disclaimer of interest process created by Congress in the Federal Land Policy and Management Act (FLPMA) was not intended by Congress to be used to give away rights-of-way across public land. Congress intended the disclaimer process as a way of clearing private title to land in which the Federal Government had *no* legal interest. Use of the provision — as recently revised through controversial regulations issued by the Interior Department — for R.S. 2477 claims is inappropriate and illegal. The disclaimer regulation amendments – aimed at relaxing the standards by which states, counties, and others could be granted rights-of-way – also violate a 1997 Congressional mandate prohibiting the Interior Department from issuing final regulations concerning R.S.2477. Congress wanted to reserve to itself the authority to resolve this issue.

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