

**Alaska Center for the Environment * Alaska Coalition* Alaska Conservation Alliance
Alaska Conservation Voters * Alaska Quiet Rights Coalition
Alaska Rainforest Campaign * Alaska Wildlife Alliance * Alaska Wilderness League
Audubon Alaska * Campaign for America's Wilderness * Center for Biological Diversity
Copper Country Alliance * Defenders of Wildlife* Denali Citizens Council
Earthjustice* Greenpeace USA* National Parks Conservation Association
National Wildlife Federation * Natural Resource Defense Council
Northern Alaska Environmental Center * Sierra Club* Sitka Conservation Society
The Wilderness Society * Trustees for Alaska
Wilderness Watch * U.S. Public Interest Research Group**

September 6, 2003

The Honorable Gale Norton
Secretary
United States Department of the Interior
1849 C Street NW
Washington, DC 20240

Re: State of Alaska's Proposed Memorandum of Understanding on Right of Way Acknowledgement

Dear Secretary Norton:

On July 24th, Alaska Governor Murkowski gave your office a proposed memorandum of understanding (MOU) between the State of Alaska and the Department of Interior. The MOU would facilitate the processing of RS2477 claims under the new disclaimer regulations promulgated by the Bureau of Land Management on January 6, 2003. On behalf of the millions of members represented by our respective organizations, including thousands of Alaskans, we urge you to reject this or other similarly drafted MOUs.

Although presented by the Governor as a "common-sense" solution, the proposed MOU does not achieve its laudable goals. Rather, it is a clear attempt to push phantom right-of-way claims through National Parks, National Wildlife Refuges, designated wilderness and other critical wildlife habitat and wetlands in clear contradiction to your stated policies. In addition, the proposed MOU violates existing law and weakens existing protections for public lands.

During your recent speech to the Alaska Resource Development Council and our meeting in Anchorage, you emphasized Interior's desire to "rise above the rhetoric and find real solutions" to the RS2477 debate by acknowledging non- controversial, regularly maintained roads. The Governor's draft clearly does not intend to provide "real solutions" and opens the door for other states to follow suit. Specifically the MOU attempts to do the following:

Alaska's Proposal Attempts to Turn Trails Into Highways.

The draft MOU 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 dogsled 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, dogsled, or snowmobile. This section of the MOU contradicts arguments the current 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 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 grants "acceptance of the RS 2477 offer shall be determined under state law." Alaska's state law interpretation of RS 2477 is so expansive that it may include seldom-used hunting trails and 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 lies 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 be 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. Rather, it explicitly states it would like to apply the proposal to "other federal lands."
- By selecting 14 trails that include dogsled paths 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 enable others to prevail in claims for roads through environmentally sensitive areas.

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 has 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 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 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 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 to clear 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 RS 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 RS2477. Congress wanted to reserve for itself the authority to resolve this issue.

The Department's treatment of RS 2477 rights-of-way claims is of critical importance to the future management and conservation of millions of acres of public lands throughout Alaska. Given the central importance of this issue in determining the future disposition and management of vast expanses of public lands, we urge you not to enter any agreement with the State of Alaska. We urge you to use a balanced and common-sensed application of modern transportation law that includes public participation, environmental analysis and the most up-to-date scientific knowledge for managing our lands wisely for future generations.

Sincerely,

Randy Virgin
Executive Director
Alaska Center for the Environment

Tim Bristol
Executive Director
Alaska Coalition

Tom Atkinson
Executive Director
Alaska Conservation Alliance

Trish Herminghaus
President
Alaska Quiet Rights Coalition

Michael Finkelstein
Campaign Manager
Alaska Rainforest Campaign

Stan Senner
Executive Director
Audubon Alaska

Corrie Bosman
Alaska Program Coordinator
Center for Biological Diversity

Nancy Bale
Board President
Denali Citizens Council

Melanie Dulchin
Alaska Director
Greenpeace USA

Tony Turrini
Alaska Director
National Wildlife Federation

Arthur Hussey
Executive Director
Northern Alaska Environmental Center

Peter Van Tuyn
Litigation Director
Trustees for Alaska

Sara Chapell
Alaska Representative
Sierra Club

Martha Levensalar
Board President
Alaska Conservation Voters

Karen Deatherage
Alaska Program Associate
Defenders of Wildlife

Cindy Shogun
Executive Director
Alaska Wilderness League

Marcia Argust
Legislative Representative
Campaign for America's Wilderness

Ruth McHenry
President
Copper Country Alliance

Eric Jorgenson
Managing Attorney
Earthjustice

Jim Stratton
Alaska Director
National Parks Conservation Association

Charles M. Clusen
Director of National Parks and Alaska Projects
Natural Resources Defense Council

Tiernan Sittenfeld
Conservation Advocate
U.S. Public Interest Research Group

Paul Joslin
Wildlife Director
Alaska Wildlife Alliance

Eleanor Huffines
Alaska Regional Director
The Wilderness Society

Kenyon Fields
Executive Director
Sitka Conservation Society

TinaMarie Ekker
Policy Director
Wilderness Watch

Cc: Governor Frank Murkowski

John Katz, Office of the Governor
Steve Griles, Deputy Secretary of the Interior
James Hughes, Deputy Director for Policy, Bureau Land Management
Drue Pearce, Senior Advisor to the Secretary for Alaska Affairs
Cam Toohey, Special Assistant to the Secretary of the Interior
Marcus Peacock, Associate Director Natural Resource Programs, Office of Management and Budget
Dinah Bear, General Counsel, Council on Environmental Quality
Fran Manilla, Director, National Park Service
Marcia Blaszak, Acting Alaska Regional Director, National Park Service
Steve Williams, Director, U.S. Fish and Wildlife Service
Rowan Gould, Regional Director, U.S. Fish and Wildlife Service
Dale Bosworth, Chief, USDA Forest Service
Denny Bschor, Regional Forester, USDA Forest Service
Kathleen Clarke, Director, Bureau Land Management
Henri Bisson, Alaska State Director, Bureau of Land Management