



The Salcha Trail, constructed by miners, used for a number of years. Alyeska was denied the right of use it. GVEA/s contractor was trespassed for using it. The Borough Selection, same area, are impressed with a reservation of that right of way as a public road. The Colorado Creek Trail in the Chena Recreation Area--the Division of Parks issued tickets last year, \$300 per ticket for trespassing with a four wheel drive rig. These were subsequently withdrawn, but the question was not answered. There have been a number of court suits on the issue. Now, say at this time, section line easements, which was a topic of discussion of this group about a year ago are derived from this same 1866 Mining Law. They are part and parcel of the R.S. 2477 grant. To my way of thinking, we need to come up, however we do it, if these people can get together or whether we have the legislature mandate it, but come up with a fixed policy, one policy for the State of Alaska. What is an R.S. 2477 road? We then need to have a group which will arbitrate whether or not an R.S. 2477 grant exists. We also need specific vacation procedures. The road is no longer needed or the right of way is no longer need, then it should be vacated. But those that may be needed should not be, because we're gonna end up buying 'em back. So, with that I'll throw it open for whatever.

Q. What is the width of a road--R.S. 2477?

A. O.K. The original grant basically, the right of way width was the road prism itself--top of cut slope to toe of fill or as commonly called, ditch to ditch. Now, that's not the case in Alaska, since the Public Land Orders and the Secretarial Orders came out from the '40's through the '50's. These orders conferred a specific width. The minimum width on the road grant is 100 feet. A section line easement's minimum width is 66 feet. Depending upon the category of road, whether a feeder road, a through road and so on, they will range from 100 to 200 and 300 feet in width. So in Alaska, they really do have a width.

Q. I'm totally confused about what "they" are. R.S. 2477 is a revised statute--that's an Alaskan statute, right?

A. No, that's a federal statute.

Q. But we're talking about federal land?

A. If the grant was issued, it had to be issued from the federal government to the governing entity of the State or Territory. Yes, we're talking strictly of public lands, initially. Now, once those lands are transferred out of public ownership, R.S. 2477 confers a grant and any transfer of title is subject to that grant. It's just that it's not a matter of public record.

Q. You mentioned that it took public funds. Is that a criteria?

A. No. You as an individual can go out and construct a road across unreserved public lands under R.S. 2477, (or you could have while the law was in effect). R.S. 2477 was rescinded by the Federal Land Policy and Management Act of 1976. What we're dealing with now is history. You'll never have any more. But we are dealing with history.

Q. But you can build a new road on these old right of ways and there is a prescribed width in Alaska, not just the ditch to ditch line?

A. Yes. Some section line easements are 66 feet, the majority are at least 100 feet in width.

Q. If you're dealing with an old trail that is not on a section line, you're talking a minimum of 100 feet in width?

A. Yes. (Garble) Ever use 'em for access (garble) and was not vacant so early (garble) and was ditch to ditch.

Q. I have a quote here from PLO 601, if you want to have that in the transcript.

A. OK.

Q. "Public lands lying within 300 feet on each side of the center-line of the Alaska Highway, 150 feet on each side of the center-line of all feeder roads, and 50 feet on each side of center-line of all local roads. B. Through roads are the Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, and Tok Cutoff. C. Feeder roads are Steese Highway, Elliott Highway, McKinley Park Road, Nome-Solomon Road, Anchorage-Potter-Indian Road, Edgerton Cutoff, Tok-Eagle Road, Ruby-Long-Poorman Road, and Kenai Lake-Homer Road, Fairbanks-College Road, Anchorage-Lake Spenard Road, and Circle Hot Springs Road. D. Local roads are all roads not classified as not through or feeder roads established or maintained under the jurisdiction of the Secretary of the Interior."

Q. What is considered to be a use that took it out of public domain for purposes of this road, what type of uses?

A. Construction for a public road.

No, no. If there was some prior filing that took it from the public domain, then a road could not be claimed under this.

Right. Any of the settlement laws which segregated the land, that was really it, or any federal withdrawals. Mining claims, T & M sites, headquarters sites did not segregate the land until the tracts were actually appropriated, so if somebody was living there and had business there and had filed a trade and manufacturing site, then the land was reserved public land. However, if somebody had filed an entry and there was nothing on the

ground, you could likely build across it and thumb your nose if you had enough protection.

Q. Al, it sounds like of the cases that are now in court or one would expect to end up in court disputing whether or not a certain trail, is today a recognized public right of way, would that depend upon whether or not some continuous use has been vacated or something like that?

A. I don't believe there's, and I'm talking off the top of my head, from what I've followed since I've been in Alaska, I don't believe there's an abandonment provision in Alaska law, as far as highways go. There are very specific procedures for the vacations.

Q. That's where the State or governing body actually---

A. Yeah, well within the Borough, with DOT/PF's concurrence, the Borough vacates State right of way, section line easement or something of this nature.

Q. You said this is not a matter of public record, you mentioned that initially when they were set up there was some paperwork somewhere that would document permission being granted to some one to put it down initially?

A. No, you did not have to contact the Federal government at all. You just do it, and all of a sudden there's the road and that tells everybody that there's a public right of way. Now, the real problem that we're experiencing today at least close in to Fairbanks, is that individuals will get into a conflict and they will litigate whether or not that is a public road and you end up with a judgement that says Yes, it's a public road, or No, it's not a public road. And the State hasn't entered in. Perhaps not all the facts of the case have been entered in, so we can lose a right of way just through inaction.

Q. Inaction; regulations proposed under the Organic Act (ref. 43CFR2800, Federal Land Policy and Management Act) says that all R.S. 2477 roads have to be surveyed in three years or else they'll cease to exist.

A. Those are proposed regulations.

COMMENT, Bob Mullihan, writer of the regulation, recognizes the error of his ways already and that's very doubtful that'll stay in the final rule making.

Q. He hasn't communicated that to me personally yet.

BLM A. Well, I talked to him a couple of weeks ago on the same subject, EMPLOYEE and he realizes he can't require that.

- Q. What is someone does own some property that they bought with a trail in there and someone blocks off the trail, what rights does he have? Would he have to go to court and defend it himself--who would help him defend his case? What if there was another land owner, say governmental land owner, in the area would they get involved in it at all, or is it really up to him to fight it out?
- A. I'll make a comment and then defer. At the present time the two people in contention generally fight it out themselves, and I'll defer to Meg and have her address the Attorney General's Office attitude on this.
- AA. They had a meeting with a member of the Attorney General's Office on R.S. 2477 roads and actually, the person that should be addressing it would be Al George, because he at least listened to it first-hand and I only listened to the tape. As Al said, the tape came back to him with teeth marks and claw marks on it. I listened and was not able to argue back with some of the things that were said so maybe Al can fill you in, having heard it first-hand.
- AAA. Well, it was disturbing for several things. I, a long time ago, being raised by an attorney, learned that you don't ask an attorney what you can do. You tell an attorney--I'm going to do this, how do I do it legally? In this case, we have the A.G.'s office telling us this is what the State was going to do and I think that's the wrong position for the State of Alaska to be in. If we're going to be dictated to by the Attorney General's Office, we have problems. The attitude was that it was up to the individual to defend himself and the State had no part of this, in fact, the State should studiously keep out of it. And, in cases of R.S. 2477 intent, I think that's probably a wrong position to take and I'm not so sure an organization like this one shouldn't ponder this and make a--present a position paper to the State of Alaska requesting some kind of activity that would bring this forth and get it into a public forum of some kind so that all of the facts can be presented and people be aware of the far reaching ramifications of this. There are an awful lot of roads that are not necessarily in use today that did have public funds spent on them in the form of the Alaska Road Commission, which in Territorial days, was the Department of Transportation. These were matching funds, part Federal and part Territorial, if I remember correctly, and there's no question as to whether public funds were spent on this. The acknowledgement and dissemination of public funds I think should be adequate evidence that the road was acknowledged by the public body at the time and as has been pointed out, I'm not aware of any method of vacation other than legal act that's on the books in the State of Alaska right now and has been for some time, but there is a definite procedure that you go through to formally vacate a road. And it requires, among other things, public notice and a public

hearing. And not an arbitrary decision that's made in a bureaucratic office someplace. And so the individual is the one that is being harmed first of all. But in the long run, I think it's going to be the public.

Q. (Garbled)

A. Yes. Any public right of way, any grant the State has, it has jurisdiction over it and they have procedures to vacate a public right of way. To go a step further than what Al said, the Borough last year had finally recognized the problems and here we're talking the individual having to defend a public right, not his right, but the general public's right which is really the responsibility of the governmental agencies and really, in this case, the responsibility of the State since they have the grants. But the Borough went forward with an ordinance recognizing these public rights and went ahead and then required to defend them if they were blocked. That ordinance has been up twice in the past year and it has failed both times--has not been acted upon. As the A.G.'s Office dissertation states, let the public, er, let the people defend themselves. But again, I reiterate, these are public grants, they belong to all of us. The basic problem with individual litigating amongst themselves is that the public rights are not recognized, and they may or may not get the judgement that they're after but the public loses if the grant is declared private.

Q. I'm curious--are there any people here from the State that are involved in or would be the logical people to become involved in any procedure for vacating one of these R.S. 2477 trails?

A. Bill (Copeland--DNR) and Paul (Wild--DOT/PF) would be logical as I see it.

Q. Well, it seems to me that even though the A.G.'s Office is saying it's all well and good for the individual to bear the burden of any action that would affect me, nevertheless it's the only mechanism for vacating--is the only mechanism touted by the State. For example, Salcha Trail, I'm not too wild about the idea that maybe tomorrow or next year or whenever Northwest Pipeline or whoever it might be get their caravan of equipment and make use of that road. And I'm probably representative of other people. And the same is probably true of a lot of trails around the area--Colorado Creek Trail out on Chena Hot Springs Road. But I was wondering if I as an individual or a member of the public or pipeline could go to the State with a specific procedure. I have a suspicion that it is high time it be handled. This road was created during a special time for a special purpose and has a time and place in history but time and conditions have changed, to vacate.

A. At the present time, in that specific case, you could initiate the action with the Borough--there will be public hearings and so on and the State has to concur before the vacation is effective.

Q. You mean--I have to go through the Borough.

A Yeah, within the municipality, the Borough is the first point in those instances.

Q. I have two questions I'd like to pose. How many of the cabin owners in your vicinity up there used the trail for access to get material in to their cabins and secondly, how many miners are going on beyond and using themining district beyond, which is what the intended road was in the first place? There you would have them landlocked.

Q. Well, I'm not intending to have them excluded

A That's the whole point. That's why I feel very strongly about R.S. 2477 right of ways. If, in fact, the majority of the public does not wish a right of way at a specific location, then you damn well better vacate it properly and not stick your head in the sand and have somebody come in and run rough shod across you when you think you're safe.

Q. Well, you've got a point. I'm sure a lot of these areas, the people do use them, but use them in a way--their use is compatible with one or the other, like miners going up to their area.

A I have a position paper on this I prepared while I was at the Borough last winter. Some of our legislators have it--I infuriated Bettye Fahrenkamp by using Salcha Trail as a bad example. She also has property up the Salcha. But the point is, if you don't want the trail, then it better be vacated because someone someday will come in and they may cut a four lane without a by your leave.

Q. If you vacate it, does that mean if the State catches you on it tomorrow, they can sue for trespass?

A. Absolutely. A right of way is a right of way.

Q. You can't qualify the vacation?

A. No, you cannot

Q. For instance, if R.S. 2477 was still active, someone homesteaded and used a wagon trail, or in modern times, if someone used it for a snowmobile trail, or a ski trail or a road, varying uses--if I am a subsequent homesteader on that trail, then is my land subject to R.S. 2477 to the extent that there is a ski trail or snowmobile trail or wagon trail, a mining trail, a gravel road or four lane. Do you know of any clarification as to whether or not the R.S. 2477 defined the kind of right of way, say as a public trail, but is for mining and not additional development of right of way for a four lane highway.

- A. R.S. 2477 granted a right of way for public highways
- AA. PLO 601 reserved those lands for highway rights of way as follows: highway rights of way.
- A. The definition in State statute for a public highway includes trails but they do not qualify the use for which the trail may be put. You got a right of way, you got a public highway. Be it for a trail, or four lane, whatever. That's the way I see it
- Q. Speaking strictly in Alaska, PLO whatever, we know minimum width is 100 feet. It it's an R.S. 2477 trail, the minimum is 100 feet in Alaska, but not in the other states?
- A. Right, in other states it's the road prism, top of cut, toe of fill. It was intended to provide access and solve the miner's problem, for instance mining ground--20 Mile Trail goes up to a cabin in wintertime and hike in in the summer and if public policy says there is a couple of hundred foot right of way you would have a right to go over there eventually. The right of way is for a public highway and if an individual today can build a public highway then certainly he can do it. Now certain states do not allow an individual to build a public highway. Alaska does, as far as I can tell.
- Q. Not all highways build by individuals are necessarily public--depends upon the intent of the individual or miner or private company.
- A. The Haul Road in to the Jarvis Creek Coal Fields for instance. Built in the late '50's, early '60's is not an R.S. 2477 road, that's a gravel road over seven miles long, virtually two lane, and it is not an R.S. 2477 road. They came in prior to construction and they acquired tram road right of way. They have an exclusive, private-use road.
- Q. Is it not fair assumption that any of these old trails that crisscross this valley and all valleys in Alaska for historical access to distinct areas of mining and whatever kind of activity that was going on were public access and more than one individual could use it.
- A. I would say the majority, yes. Again, you have to look at the land tenure--what are the trails for? If they're across Federal lands, yes. It would be an R.S. 2477 grant.
- Q. I just build a road last weekend to some mining property across State land. (Laughter)
- A. You probably won't get a trespass notice 'til next week. This is the wrong time to mention that. (Laughter)



- Q. If a person's access to their home and property crosses what was BLM land and is now State selected, what rights does that person have or how does this enter into this discussion?
- A. Really, two. First, if the access was constructed while it was Federal land and land was not reserved then that portion of your access would be R.S. 2477 or the implied right of access granted under settlement laws, federal mining laws. The other degree of protection is that the State usually has a clause or reservations in their conveyance documents that also says that existing prior--their conveyance is subject to prior existing rights. That does not mean that you won't have to defend it yourself.
- Q. I wonder if everybody here is aware that the State DOT/PF has an index of all the R.S. 2477 trails in our office and a computer printout that tells how we got the information for all those trails, and we've got maps; BLM has the same thing at their office. If anybody is interested in getting land and finding out about the access you have it pays to do a lot of research before putting any money on the line if you want to buy property. We at the DOT are willing to help you look up and research any of these trails or access to your property. We need to know the area, township and range, section, which meridian, and all that. We do have those and spent a lot of time in the early '70's researching all that. That information goes as far back as 1900, 1898 when the miners were crisscrossing this country. There are just hundreds and thousands of miles of trails and they go from everything from dog team trails out along the Bering Sea all the way from Point Barrow clear down to Unalakleet, clear on down the Yukon/Kuskokwim Delta. Those are all right of way trails--a dog team trail doesn't take that much space and you have miner's trails, sled trails. But they are listed in indexes and if you are considering--if your're interested, find out what the access is to it and what is on it. Most of 'em are R.S. 2477 rights of way. PLO 601 specifies what State right of way is, but that doesn't necessarily mean all R.S. 2477 trails have to be 100 feet wide. Because you go back historically to what the original intent of the trail was. Public right of way, not highway right of way.
- A. Right of way for the construction of highways over public lands is hereby granted. (Garble) A dog trail is a highway, it's not a road automobile highway.
- Q. Al, if the definitions and--for the width for R.S. 2477 trails--does that 1949 date have anything to do with how wide it is? Say you have a trail across unreserved public land that was built in 1923 and one that was built in 1955. May there be a difference in right of way width?
- A. That's a question I can't answer, in fact right now I don't think anyone can answer it. The early on 2477 rights of way, as I said, were top of cut, toe of fill, whatever that was. If you had a

five foot wide dog trail, that's what you got, a five foot wide dog trail. If, in the meantime, that land went into private ownership and then these public land orders, which conferred a specific right of way width came into being, they didn't attach to the private land so you may very well have a 100 foot right of way that necks down to ditch to ditch and expands back out to 100 feet and necks down again. But as I say, this is something that only the courts can decide.

- Q. Do you know of any of the court cases that have been brought to litigation in this area about 2477 roadways width. I think Esro Road was one of them back in the early '60's. Do you know what the criteria (I think that we've lost more) that the people that claimed that there is an access easement have lost more of the cases than they have won.
- A. Esro Road was litigated this past year final judgement--I believe just this past year, and it was determined to be a private road. From what I've been able to pull together on that case, not all of the information was presented to the judge to make that decision. But the State did not intervene and as a result now you've got a private road and if someone wishes to use it, you're gonna have a real battle overturning that prior judgement and having it declared a public road. And then you come into the question of damages, perhaps to the individual who has been denied access, denied the right to subdivide their property, because there is no public access. So. We can get into some real cans of worms through inaction.
- Q. Just as a footnote to that case (I represented the private party) R.S. 2477 never entered.
- A. It was mentioned to some of the researchers because I mentioned it.
- Q. I think there was a good case, maybe back in the '40's, back on Rosie Creek Road.
- A. Yes, Becker Ridge Road
- Q. In the R.S. 2477--(garble involved a cabin
- A. Yes, the same situation prevails--the case didn't go to court. it was settled agreeably out of court--it never really has been litigated. However, the road has been blocked ever since 1972 and no one has successfully or willingly taken the case to court

The point is that we have a lot of these cases. People on the Tribulation Trail came home a year ago and found 10 yards of gravel up the middle of the road, no trespassing signs. They had an \$80,000.00 house beyond the point--they couldn't get to it. We've got lots of problems. The individual shouldn't have to defend and fight for a grant that the State has. The State should do that.