

# Access in Alaska: Should You Be Concerned?

by Anna Plager

In 1946, Lenora Conkle and her husband Bud, bought a civilian jeep and headed up the Alaska Highway to pursue their dream. Bud always wanted to be a big game hunter in Alaska, and Lenora longed to be near the snow-capped mountains. They homesteaded 160 acres at Cobb Lake (mile 58 of the Tok Highway), built a log home, bought horses and developed their guiding business. They acquired the deed to the homestead in 1969 and built a lodge for clients. They lived their dream, with

son, Colin, until they found that their home and business were in the middle of a new national park—Wrangell St. Elias National Park, established in 1980.

Their access problems began then and continue today. The road they built provided the only road access to the lake and surrounding areas, which the Conkles kept open for anyone to use, including the Park Service. After many years of trying, the Conkles were unable to obtain a right of way for access to their lodge. Bud died in 1985.

The Park Service now wants to provide Lenora with a permit to use the road for a fee of \$2,859. Lenora has continued to work on this problem and has now applied for help from the Alaska Department of Natural Resources, hoping that her access rights can be met through assertion of an "RS 2477."

Although RS 2477 is not likely to become a household word, it represents a very powerful access tool for the state—one that may help Lenora Conkle and Cobb Lake users, and can meet other access needs throughout the state. Recent activity by Congress and the Department of Interior has raised concern about losing Alaska's access options. A new RS 2477 project by the Alaska Department of Natural Resources was established in anticipation of this federal change, and to provide access options for Alaskans for decades to come.

### Background

*The right of way for the construction of highways over public lands, not reserved for public usage is hereby granted.*

This grant was enacted as Section 8 of the Mining Act of 1866, 10 months before Alaska was purchased from Russia. It later became Section 2477 of the Revised Statutes, what we now call RS 2477. This simple phrase granted a public right of way across unreserved federal land to guarantee access as land was transferred to state or private ownership. Rights of way were created and granted under RS 2477 until its repeal in 1976, more than 110 years later.

RS 2477 rights of way are an essential method to acquire legal access to important resources and lands. Nearly two thirds of Alaska will remain in federal ownership, with large blocks in



## RESPONSIVE To The Needs Of Our Clients

- Feasibility Studies
- Project Management
- Engineering Design
- Route Selection
- G.P.S./Conventional Surveys
- Permits
- Material Management
- R.O.W. Acquisition
- Title Research
- Damage & Claim Settlement
- Mapping
- CAD Drafting
- Construction Management
- Inspection

Contact Del Delcours, Willbros Butler Engineers, Inc.  
(918) 496-0400, 2087 E. 71st Street, Tulsa, OK 74136

conservation system units. Large holdings by native corporations from a checkerboard pattern of land ownership that make access more difficult. Continued public access to and across land now in private hands or in conservation system units, is essential for Alaska.

Because Alaska is a young state, formal recognition of many access routes has not yet occurred. Options to acquire rights of way in Alaska are scarce: Easements reserved under Sec. 17(b) of the Alaska Native Claims Settlement Act are limited; the right-of-way provisions in the Title XI of Alaska National Interest Lands Conservation Act are so cumbersome they have never been successfully used to establish right of way. The method used to acquire access for the Red Dog Mine Road in northwest Alaska is unrealistic for most of us—it required an act of Congress for a land exchange between the native corporation and the National Park Service.

#### *State Action Needed*

RS 2477 rights of way are an especially important issue now because Congress has considered legislation that would establish new requirements for federal approval of each route. Also, new federal Department of Interior regulations, expected in January 1994, may curtail the state's ability to assert RS 2477 claims.

Hundreds of trails have been used publicly throughout the history of the state. Present trail users are concerned about losing access if the federal regulations are put into place. Miners, native corporations, environmental groups, recreational users, local governments and others are concerned about access, and none of them agree on how access should be developed and managed.

A number of court cases have challenged public rights to use paths and roadways. State court decisions have varied. Federal courts have started interpreting the issue, passing down decisions that contrast with the previous state decisions. Many RS 2477 issues remain unclear and untested.

#### *What is being done?*

The Alaska Department of Natural Resources, Division of Land, has been funded for one year to identify, re-

search and document up to 500 rights of way established under RS 2477. Criteria for selecting routes include: does it provide access to resources and state land, to community or to federal lands not otherwise reachable over land?

To successfully document an RS 2477 right of way, the route must be researched and mapped to show that the right of way crossed public land when it was unreserved federal land, and that public users or a public authority ac-

---

### *Continued public access to and across land now in private hands or in conservation system units, is essential for Alaska.*

---

cepted the route. Once trails that are important to the state are identified, historical records are prepared and land status is researched to identify affected landowners. If the record establishes sufficient evidence, landowners are notified, and the trails are asserted.

The first 10 trails were selected for the range of users served and landowners affected: some trails cross federal land, some cross native land or other private land; some are needed for mining access, some for recreation, and others provide access between communities. The state anticipates litigation for these first 10 trails to establish criteria for future RS 2477 decisions, thus minimizing the number of routes that must subsequently be decided in court.

These trails have been identified and researched, and we will soon assert them to the landowners and submit them for quiet title action in court.

Work on other trails is advancing rapidly. About 150 trails have been researched and are being prepared for assertion. Another 80 researched trails will not be asserted for various reasons. For example, some are already in or parallel to an established right of way. Five hundred trails is a fraction of the total number of historic trails around the state. No one knows how many possible routes might qualify under this RS 2477 grant. Twenty years ago, about 1,500 routes were identified in a study by the Department of Highways. Funding is being sought to continue the project another year to research and assert more trails, and to conduct field surveys of select trails.

One major misconception about this project is that the state intends to build roads on these rights of way. Alaska's intent to protect its RS 2477 rights does not necessarily mean maintenance or improvements will happen. Some rights of way will be improved for access to valuable state resources, communities and land. Others will be used as they have in the past. Some may not be used at all or may be developed only for a hiking trail.

RS 2477 rights of way will not cure all public access problems on federal, state and private land. It may take years to defend assertion of a single trail or road through the judicial system. The state has just started the time-consuming and expensive litigation to clarify what an RS 2477 really means to the landowner and public user. Many Alaskan landowners, such as native corporations, want assurance that their rights and interests will not be hurt in the process of RS 2477 identification and platting. Federal, state and local governments must consider these concerns.

No one has the crystal ball to predict which routes will be most needed in the future, but each of us can contribute from our knowledge and experience. The Department of Natural Resources welcomes any information you may have. If you have used a trail before 1969 (when the "Alaska Land Freeze" went into effect), or if you know of someone else who has, let the Department know. Rights of way are vital to Alaskans' use of the land and long-term economical benefit. □

---

*Anna Plager, Project Manager, RS 2477 Project State of Alaska, Department of Natural Resources, Division of Lands, received a masters of science from the University of Washington in Natural Resource Management and Planning. Employed by the state Department of Natural Resources since 1980, she has worked as Chief Planner for the northern Region of DNR since 1985. She is responsible for land planning for all state land north of the Alaska Range.*