

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
<http://www.blm.gov>

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In Reply Refer To:
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EMS TRANSMISSION 08/22/2008
Instruction Memorandum No. 2008-174
Expires: 09/30/2009

To: All Washington Office and Field Office Officials
From: Director
Subject: Road Maintenance Agreements

PROGRAM AREA: Lands and Realty

PURPOSE: On March 22, 2006, Secretary Norton issued a memorandum entitled "Departmental Implementation of *Southern Utah Wilderness Alliance v. Bureau of Land Management (BLM)*, 425 F.3d 735 (10th Cir. 2005); Revocation of January 22, 1997, Interim Policy; Revocation of December 7, 1988, Policy" to the Assistant Secretaries of Land and Minerals Management; Fish, Wildlife and Parks; Indian Affairs; and Water and Science (Memorandum). Among other things, the Memorandum discussed the legal principles set forth in *SUWA v. BLM* on the recognition, use, maintenance, and improvement of rights-of-way (ROW) obtained under Revised Statute (R.S.) 2477.

The Memorandum also provided that in instances where a governmental entity, such as a state, county, city, or town, and the BLM are interested in preserving the condition of a road without regard to its legal status, the use of a road maintenance agreement (RMA) may be an appropriate means to accomplish this goal, and that the BLM has used RMAs for such purposes for many years. The Memorandum also directed all bureaus within the Department of the Interior to revise any existing guidance or policies on R.S. 2477 to be consistent with the *SUWA v. BLM* decision and the Memorandum. This Instruction Memorandum (IM) is issued pursuant to the Memorandum and is intended to provide guidance on the use of RMAs.

POLICY/ACTION:

The Memorandum notes that RMAs are a valuable tool for allocating responsibility as between the BLM or relevant governmental entity (hereinafter "county") for the routine maintenance of many roads on BLM administered public land. As explained in *SUWA v. BLM*, "routine maintenance" includes work that is reasonably necessary to preserve the existing road in its present condition, including the physical upkeep or repair of wear or damage whether from natural or other causes, maintaining the shape of the road, grading it, making sure that the shape of the road permits drainage, and keeping drainage features open and operable – essentially preserving the status quo. Further, under the principles set forth in *SUWA v. BLM*, the holder of an R.S. 2477 that has been adjudicated in Federal Court or recognized by the BLM as an administrative nonbinding determination may undertake routine maintenance on the ROW without first consulting with the BLM regarding such activities.^[1]

RMAs do not make any determination regarding the legal status under R.S. 2477 of the roads to which they apply. RMAs have been used by the Department for many years because they encourage collaboration and communication, and discourage confrontation and litigation. Nothing in this IM is intended to require the alteration of any existing RMA or similar agreement, but to instead encourage the use of RMAs. Existing RMAs may continue to be used if they meet the requirements of the decision in *SUWA v. BLM*, the Memorandum, and this IM. If an existing RMA is not consistent with these requirements, the BLM should work with the county to revise the RMA as appropriate.

Attachment 1 to this IM sets forth a model RMA. While particular circumstances may warrant the modification of some of the provisions of the model RMA, a number of its provisions should be present in all RMAs. An RMA should:

- a. Provide for the routine maintenance of covered roads by either the BLM or the local government;
- b. Adopt the definition of routine maintenance in *SUWA v. BLM* as outlined in Exhibit B of the attached Model Agreement;
- c. Specifically provide that it does not affect the legal status of the roads covered by the RMA or the right of any person to assert or contest rights under R.S. 2477;
- d. Recognize the BLM's responsibility for the orderly administration, management, and protection of the public lands and their natural resources;
- e. Provide a mechanism for communication regarding any maintenance that is to be undertaken; and
- f. Make clear that any activity beyond "routine maintenance" is not covered by the RMA.

The BLM should make available to the public a list of the roads covered by the RMA, and provide the public an opportunity to review the list of roads for 30 days prior to the execution of the RMA. The relevant BLM office should also consult with the appropriate Solicitor's Office to ensure that the terms of any RMA it enters into are appropriate under the circumstances, comport with the law, and are consistent with the underlying land use plan.

An RMA simply allocates responsibility between a county and the BLM for maintaining the status quo of the roads covered by the RMA. An RMA is not a grant of permission from the BLM to a county to undertake such routine maintenance and, consequently, there is no Federal action that triggers the requirements of the National Environmental Policy Act (NEPA), and the BLM is not required to complete a NEPA analysis in preparing an RMA. Similarly, there is no Federal action that triggers the requirements of the National Historic Preservation Act or the Endangered Species Act.

TIMEFRAME: This IM is effective upon receipt.

BUDGET IMPACT: This IM provides guidance for establishing RMAs. The cost for establishing and utilizing RMAs is not subject to reimbursement of the BLM's expenses under existing cost recovery regulations pertaining to rights-of-way. Offices are encouraged to seek reimbursement of administrative costs for preparing RMAs by means of contributed funds. Therefore, the impact on the budget may be unnoticeable to significant depending upon how much contributed funds for RMAs are requested. The BLM will have to bear these expenses, unless a county agrees to reimburse us for our costs.

MANUAL/HANDBOOK SECTIONS AFFECTED: None

COORDINATION: This guidance was coordinated within the Solicitor's Office, the BLM's Washington Office, and with State Office technical staffs and managers involved in the R.S. 2477 program.

CONTACT: If you have any questions or concerns regarding this policy, please contact Jeff Holdren, Lands, Realty, and Cadastral Survey Division (WO-350) at 202-452-7779 or via email at jeff_holdren@blm.gov.

Signed by:
James L. Caswell

Authenticated by:
Robert M. Williams

1 Attachment

1-Sample Road Maintenance Agreement (9 pp)

[1]On the other hand, for those situations in which a county is not the holder of an R.S. 2477 ROW or ROWs, RMAs are appropriate for those roads where neither the BLM nor a county proposes to alter the physical attributes of the road, but instead wishes to simply provide for the routine maintenance of the road.