

R.S. 2477 - Rights of Way Issue

Congress enacted revised statute 2477 in 1866, granting a "right-of-way for the construction of highways over public lands." This grant existed until 1976, when Congress repealed the law. Congress specified that any valid R.S. 2477 rights of way existing at the time of the repeal would continue in effect. This has resulted in considerable doubt as to whether counties or the federal government own certain roads on federal lands.

On March 22, 2006, Secretary of the Interior Gale Norton announced new guidelines to assist Interior land managers in implementing a recent court decision regarding roads across federally owned lands. The new guidelines implement the principles outlined in the 2005 Southern Utah Wilderness Alliance v. Bureau of Land Management (SUWA v. BLM) decision by the United States Court of Appeals for the 10th Circuit. This decision and the new guidelines protect federal lands by clarifying that these roads cannot be expanded or significantly improved without consultation with federal land managers.

An R.S.2477 road before implementation guidelines and the same R.S.2477 road after implementation guidelines

"The Court's decision provides a thoughtful and reasonable way to resolve road disputes between the federal government and counties," Norton said. "The decision allows the roads to be maintained at the status quo; it does not authorize automatic expansion of roads. Our new guidelines respect the obligation that Interior has to protect federal lands and environmentally sensitive areas, particularly parks, refuges and congressionally designated wilderness areas."

SUWA v. BLM clarified many legal issues related to Revised Statute 2477 (R.S. 2477), which granted rights of way for the construction of public roads across federal land. Because of this clarification by the 10th Circuit, Secretary Norton also formally revoked the interim Departmental policy on R.S. 2477, issued in 1997. In addition, the new guidelines direct the termination of the Memorandum of Understanding entered into between the Department and the State of Utah in April, 2003.

In SUWA v. BLM, the 10th Circuit clarified that only courts could finally determine the ownership issue, but that federal agencies are permitted to develop a process to analyze claims for administrative purposes. The new guidelines announced today clarify how Interior will carry out its obligations following SUWA v. BLM.

"For example, under the guidelines announced today, a dirt road will remain a dirt road and a two-track road will remain a two-track road unless there is a permitting process and environmental analysis," Norton said.

The new guidelines recognize the special status of national parks, wildlife refuges and congressionally designated wilderness areas and direct Interior land managers to issue, as

necessary, revised instructions or guidance consistent with the SUWA V. BLM decision and their obligation to protect federal lands and resources. The new guidelines recognize a number of options for Interior land managers to address claimed rights of way:

- where a claimant wishes to do no more than maintain the existing status quo of a road and the current use and maintenance are consistent with the land manager's duty to protect the surrounding and underlying federal lands, the parties may utilize a road maintenance agreement;
- where title to the road is already vested in an entity other than the federal government, the parties may utilize a recordable disclaimer, which formalizes that the federal government itself does not dispute the entity's road claim;
- where a road has an unclear R.S. 2477 status but the land manager and a claimant agree on the need for the road, the BLM, pursuant to FLPLMA Title V, may grant rights of way irrespective of R.S. 2477;
- where a claimant wishes to perform construction or expand use beyond the status quo, the land manager may make an informal, nonbinding determination (NBD) of whether the R.S. 2477 claim is valid and whether the proposed improvements are reasonable and necessary in light of the traditional uses that established the claimed right of way. A land manager would allow improvement only if the land manager determines that the improvement is consistent with the traditional uses and is consistent with Interior's duty to protect surrounding and underlying lands;
- where a claimant seeks a binding determination of a claimed right of way, the claimant may file a quiet title action. A court would then make a determination.
- Before a land manager implements any of the above options, members of the public will be given notice and an opportunity to comment.

Additional Documents and Information on R.S. 2477:

[10th Circuit SUWA v. BLMS Opinion](#)

[Department of the Interior Guidelines for Implementing SUWA v. BLM](#)

News Releases on Rights of Way Issue

03/22/2006 - [Interior Department Announces Guidelines to Implement Court Decision on R.S. 2477](#)

04/09/2003 - [Interior and State of Utah Reach Landmark Agreement on R.S. 2477 Rights-of-Way Issue](#)