
GREAT PUBLIC LAND GIVE AWAY – RS 2477

More than a century after the western United States was fully settled, some state and local governments and mining, logging and off-road vehicle interests want to exploit a loophole in a Civil War-era mining law to bulldoze highways across National Parks, National Forests and other public lands. These special interests propose to convert thousands of miles of cow paths, wagon ruts, stream beds and illegal off-road vehicle tracks across western public lands to paved highways while opening many others to dirt bikes, ATVs and other off-road vehicles. Many of these claims would slice up the few remaining pristine areas on western public lands.

What is RS 2477?:

As the Nation's westward expansion accelerated following the Civil War, Congress included a one-sentence provision in an 1866 mining law to facilitate the construction of highways across public lands. That provision read in full: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." This provision is known today as RS 2477.

In 1976, Congress repealed this outdated and unnecessary law, but subsequently authorized the Department of Interior to recognize legitimate highways that were constructed prior to repeal.

A Highway is a Highway, or Is It?:

In thousands upon thousands of cases, states and counties, mining and logging companies, and off-road vehicle interests claim that cow paths, century-old wagon ruts and mining routes, and hiking trails are "highways."

They often assert that the simple passage of a vehicle across the ground constitutes "construction" of a highway. This contention defies common sense, federal court decisions and long-standing Department of Interior policies.

In *Southern Utah Wilderness Alliance v. BLM* (June 2001), a federal court in Utah upheld a decision by the Bureau of Land Management (BLM) that several RS 2477 claims submitted by Utah counties did not meet the fundamental requirements of the law.

The court made clear that the term "construction" means that a route must be developed through "intentional

physical labor," not simply with the passage of vehicles across the land.

The court also upheld BLM's determination that a "highway" "must be public in nature.... It is unlikely that a route used by a single entity or used only a few times would qualify as a highway.... Routes that do not lead to an identifiable destination are unlikely to qualify [as highways]."

RS 2477 Loophole Poses Major Threat to Western Public Lands:

Tens of thousands of miles of questionable road claims could be made using the RS 2477 loophole. These claims extend across National Parks, Forests, Wildlife Refuges and other public lands in virtually every western state and Alaska.

In a 1993 memo, the National Park Service estimated that possible RS 2477 claims could threaten 17 million acres in dozens of park units. The Service explained that the impacts of these claims "could be devastating ... [They] would undoubtedly [damage] most unit values and seriously impact the ability of the [Park Service] to manage the units for the purposes for which [the units] were established."

San Bernardino County in California has identified nearly 5,000 miles of road claims through Mojave National Park and other public lands in the California desert.

The State of Utah has identified 15,000 routes that it could claim. Routes criss-cross Zion and Canyonlands National Parks, Dinosaur and Grand Staircase-Escalante National Monuments, and

thousands upon thousands of acres of pristine Red Rock Canyon country that Congress could designate as wilderness.

An extremely broad decision from the Alaska Supreme Court suggests that the State could claim every section line as an RS 2477 right-of-way. Section lines cover more than 1 million miles across Alaska like the grid on a sheet of graph paper.

Bush Administration Compounds the Problem:

In January 2003, the Bush Administration compounded the problem by issuing a final rule that makes it easier for the Department of Interior to give away public land for road building.

This “disclaimer rule” is so named because it allows the BLM to “disclaim” the interest of the United States in parcels of land. Issuing a “disclaimer of interest” makes legally clear that the United States does not own title to a piece of property. This authority can serve legitimate purposes, including eliminating confusion about ownership of private land adjacent to public land.

However, the Bush Administration rule goes well beyond helping small property owners. It completely rewrites long-standing policies on this issue, gives industries and other special interests favored treatment, and generally excludes the American people from decisions about their land. The final rule:

- Repeals the previous 12-year statute of limitation on states filing a claim, creating a never-ending threat to public lands.
- Expands the universe of entities that can make claims from those that are the “present owner of record” of a piece of property to “any entity claiming title to lands.” The rule explicitly states that this change “broadens the class” of entities that can make claims “which could include, among others, a state, corporation, county, or a single individual.”
- Fails to provide objective standards with which the BLM and the public can determine whether or not a claim is valid. For example, it does not specify the criteria an RS 2477 claim would have meet in order to be considered a highway.

- Does not allow the public to participate meaningfully in determining whether or not its land should be given away.

Off-Road Vehicle Interests Prepare to Make Claims:

A front page story in the *Los Angeles Times* describes how some off-road vehicle interests view the new “disclaimer rule” as a means to implement their vision for public lands. According to the *Times*, “[T]hat vision -- of unfettered motorized access to remote country that has for decades been the province of wild animals and a few hardy backpacking humans -- is a lot closer to reality thanks to a Bush [A]dministration policy quietly adopted earlier this month.” (“Bush Opens Way for Counties and States to Claim Wilderness Roads,” January 21, 2003)

Moreover, the role of the BlueRibbon Coalition and other off-road vehicle interests in asserting claims is becoming increasingly clear. The *Times* reports, “[T]he BlueRibbon Coalition's California chapter has made three rights-of-way claims, pushing for motorized access across hundreds of miles of wilderness in Sequoia National Forest, through the King Range National Conservation Area on the north coast and in non-wilderness tracts in the Six Rivers National Forest.”

The *Seattle Post Intelligencer* reported that the “rule change was greeted warmly by off-road vehicle enthusiasts, whose numbers have exploded in recent years... Where miners and wagon trains went, so should dirt bikes, they say.” (“Bush opens up backcountry trails to vehicles,” January 1, 2003)

Clark Collins, Executive Director of the BlueRibbon Coalition, told the *Intelligencer*, “We consider [the disclaimer rule] a pretty significant gain.” When asked about the possibility of challenging the roadless character of millions of acres in National Forests by claiming bogus highways, Mr. Collins stated, “That’s why we have a real interest in it.” (*Seattle Post Intelligencer*, “Bush opens up backcountry trails to vehicles,” January 1, 2003)