

108TH CONGRESS  
1ST SESSION

# H. R. 1639

To provide a means of resolving claims regarding the continued existence of rights-of-way under former section 2477 of the Revised Statutes, which was repealed by the Federal Land Policy and Management Act of 1976.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2003

Mr. UDALL of Colorado introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To provide a means of resolving claims regarding the continued existence of rights-of-way under former section 2477 of the Revised Statutes, which was repealed by the Federal Land Policy and Management Act of 1976.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE, FINDINGS, AND PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “R.S. 2477 Rights-of-Way Act of 2003”.

6 (b) FINDINGS.—Congress finds the following:

7 (1) In 1866, to assist in the opening of the west  
8 for resource development and settlement, Congress

1 enacted a law that granted rights-of-way for the con-  
2 struction of highways across public land not reserved  
3 for public uses. That law was later included in the  
4 Revised Statutes as section 2477 and thus became  
5 popularly known as R.S. 2477.

6 (2) Section 706 of the Federal Land Policy and  
7 Management Act of 1976 repealed R.S. 2477, but  
8 did not terminate valid rights-of-way existing on the  
9 date of the enactment of the Act.

10 (3) R.S. 2477 did not require notifying the  
11 Federal Government regarding utilization of specific  
12 grants of highway rights-of-way or documentation in  
13 the public land records regarding claims for such  
14 grants. Therefore, the number and location of  
15 claimed highway rights-of-way under R.S. 2477 are  
16 unknown. However, it is estimated that potential  
17 claims for such rights-of-way could involve thou-  
18 sands of square miles of Federal lands, including  
19 lands now included in the National Forest System,  
20 National Park System, National Wildlife Refuge  
21 System, and National Wilderness Preservation Sys-  
22 tem.

23 (4) Historically, highway rights-of-way estab-  
24 lished under R.S. 2477 did not present many prob-  
25 lems to Federal land managers because the existence

1 of highways constructed on such rights-of-way was  
2 obvious and unquestioned. In recent years, con-  
3 troversies have arisen as to whether certain claimed  
4 routes are valid highway rights-of-way under R.S.  
5 2477. This causes uncertainty both for parties  
6 claiming to possess a property interest in such  
7 routes and for the agencies responsible for managing  
8 Federal lands.

9 (5) Controversies related to claims under R.S.  
10 2477 have been exacerbated by the absence of uni-  
11 form Federal standards for review of such claims  
12 and by court decisions that have failed to provide  
13 consistent guidance. In addition, some recent State  
14 laws, including laws adopted after the repeal of R.S.  
15 2477, are inconsistent with the statutory require-  
16 ments. To address these problems, in 1992, Con-  
17 gress directed the Secretary of the Interior to study  
18 the history, impacts, and status of R.S. 2477 rights-  
19 of-way, study alternatives to such rights-of-way, and  
20 make recommendations for assessing claims for such  
21 rights-of-way.

22 (6) Pursuant to this directive, officials of the  
23 Department of the Interior consulted with interested  
24 parties in the public land States and held public  
25 hearings in Alaska, California, Idaho, Oregon, Mon-

1 tana, Nevada, and Utah. In addition, the Depart-  
2 ment received and reviewed more than 4,000 pages  
3 of written comments.

4 (7) In June, 1993, the Department of the Inte-  
5 rior released the report of the results of its study to  
6 Congress. The report highlighted the need for a  
7 process whereby validly accepted rights-of-way could  
8 be recognized and administered consistently and  
9 fairly and recommended establishment of a uniform  
10 administrative procedure and standards for deter-  
11 mining within a specified period which claimed  
12 rights-of-way were validly accepted under the R.S.  
13 2477 grant from the Federal Government.

14 (8) It is in the interest of both claimants and  
15 Federal land managers to provide consistent, coher-  
16 ent guidance regarding evaluation and timely resolu-  
17 tion of claims for rights-of-way based on R.S. 2477.

18 (c) PURPOSE.—The purpose of this Act is to establish  
19 a deadline for filing of claims for highway rights-of-way  
20 under R.S. 2477 and to provide a process for consider-  
21 ation and resolution of such claims.

22 **SEC. 2. DEFINITIONS.**

23 In this Act:

24 (1) The term “abandonment” means an inten-  
25 tional relinquishment of a right, title, or claim to a

1 right-of-way pursuant to R.S. 2477, which may be  
2 inferred from a preponderance of the evidence show-  
3 ing—

4 (A) the absence of continued public use of  
5 the right-of-way for highway purposes on and  
6 after the latest available date;

7 (B) the failure of the claimant to perform  
8 lawful routine maintenance on the right-of-way  
9 since the latest available date; or

10 (C) other conduct by the claimant incon-  
11 sistent with the use of the right-of-way by high-  
12 way traffic.

13 (2) The term “appropriate Federal agency”  
14 means any Federal agency having management ju-  
15 risdiction over lands owned or controlled by the  
16 United States upon which a R.S. 2477 right-of-way  
17 is claimed to exist.

18 (3) The term “authorized officer” means—

19 (A) the Secretary of the Federal Depart-  
20 ment having management jurisdiction over  
21 lands owned or controlled by the United States  
22 upon which the longest lineal portion of a R.S.  
23 2477 right-of-way is claimed to exist or that  
24 Secretary’s designee in the Federal agency hav-  
25 ing management jurisdiction over such lands; or

1 (B) with respect to a claim involving  
2 former Federal lands, the Secretary of the Inte-  
3 rior or that Secretary's designee.

4 (4) The term "claim" means the appropriate  
5 documentation filed under section 3 asserting the ex-  
6 istence of, and a property interest in, a right-of-way  
7 pursuant to R.S. 2477.

8 (5) The term "claimant" means any State, po-  
9 litical subdivision of a State, or any other person as-  
10 sserting the existence and validity of a right-of-way  
11 pursuant to R.S. 2477, except a person who, as of  
12 the date of enactment of this Act, was barred from  
13 bringing a civil action against the United States  
14 under section 2409a of title 28, United States Code,  
15 to adjudicate the title to the relevant lands.

16 (6) The term "conservation system unit"  
17 means—

18 (A) a unit of the National Park System;

19 (B) a unit of the National Wildlife Refuge  
20 System;

21 (C) a component of the National Wild and  
22 Scenic Rivers System;

23 (D) a component of the National Trails  
24 System;

1           (E) a component of the National Wilder-  
2           ness Preservation System;

3           (F) a National Monument; or

4           (G) any part of the National Landscape  
5           Conservation System.

6           (7) The term “construction” means an inten-  
7           tional physical act or series of intentional physical  
8           acts that were intended to prepare, and that accom-  
9           plished preparation of, a highway by a durable, ob-  
10          servable, physical modification of the land along the  
11          entire claimed route to facilitate the safe and effi-  
12          cient passage of four-wheeled highway vehicles.

13          (8) The term “former Federal lands” means  
14          lands title to which has passed from the United  
15          States to another owner.

16          (9) The term “highway” means a thoroughfare  
17          along a specific identified route that, prior to the  
18          latest available date, was used by the public, without  
19          discrimination against any individual or group, for  
20          the passage of four-wheeled highway vehicles car-  
21          rying people or goods from one inhabited place to  
22          another inhabited place.

23          (10) The term “inventoried roadless area”  
24          means one of the areas identified in the set of inven-  
25          toried roadless areas maps contained in the Forest

1 Service Roadless Areas Conservation, Final Environ-  
2 mental Impact Statement, Volume 2, dated Novem-  
3 ber 2000.

4 (11) The term “latest available date” means  
5 the latest date on which a right-of-way pursuant to  
6 R.S. 2477 could have been acquired, which shall be  
7 prior to—

8 (A) October 21, 1976, in the case of lands  
9 that were unreserved public lands as of that  
10 date; or

11 (B) the date the public lands were reserved  
12 for public uses (such as date of withdrawal  
13 from entry or designation of public use by stat-  
14 ute, Presidential Proclamation or Executive  
15 Order, Secretarial Order, or administrative de-  
16 cision) in the case of public lands reserved for  
17 public uses before October 21, 1976.

18 (12) The terms “public lands not reserved for  
19 public uses” and “unreserved public lands” means  
20 lands owned by the United States that were avail-  
21 able and open to the public under various public  
22 land laws that provided for disposition to the public,  
23 but lands that had not yet been set aside, dedicated,  
24 withdrawn, reserved, settled, preempted, entered, ap-

1       appropriated, or disposed of, or on which claims had  
2       not been located.

3               (13) The term “R.S. 2477” means section 2477  
4       of the Revised Statutes, which was codified as sec-  
5       tion 932 of title 43, United States Code, prior to its  
6       repeal by section 706 of the Federal Land Policy  
7       and Management Act of 1976 (Public Law 94–579;  
8       90 Stat. 2793).

9               (14) The term “wilderness study area” means  
10       Federal land identified as having wilderness charac-  
11       teristics in a land and resources management plan  
12       for a unit of the National Forest System or public  
13       lands being managed pursuant to the Federal Land  
14       Policy and Management Act of 1976 (43 U.S.C.  
15       1701 et seq.) so as not to impair their suitability for  
16       preservation as wilderness through inclusion in the  
17       National Wilderness Preservation System.

18       **SEC. 3. FILING OF CLAIM FOR DETERMINATION OF VALID-**  
19               **ITY OF R.S. 2477 RIGHT-OF-WAY.**

20               (a) OPPORTUNITY TO FILE CLAIM.—During the  
21       four-year period beginning on the date of the enactment  
22       of this Act, a claimant asserting the existence and validity  
23       of a right-of-way pursuant to R.S. 2477 across lands  
24       owned or controlled by the United States or former Fed-

1 eral lands may file a claim to that effect pursuant to this  
2 section.

3 (b) PLACE OF FILING.—

4 (1) GENERAL RULE.—A claimant shall file the  
5 claim in the State or regional office of each appro-  
6 priate Federal agency having management jurisdic-  
7 tion over lands upon which the R.S. 2477 right-of-  
8 way is claimed to exist.

9 (2) DEFENSE LANDS.—In the case of a claimed  
10 R.S. 2477 right-of-way across lands owned or con-  
11 trolled by the Department of Defense, the claim  
12 shall be filed with the commanding officer of the  
13 military installation having real property account-  
14 ability for such lands.

15 (3) FORMER FEDERAL LANDS.—In the case of  
16 a claim involving former Federal lands, the claim  
17 shall be filed with the relevant State office of the  
18 Bureau of Land Management and a notice of the  
19 claim shall be provided to the current owner of  
20 record of the lands.

21 (c) EFFECT OF FAILURE TO MEET FILING DEAD-  
22 LINE OR REQUIREMENTS.—

23 (1) ABANDONMENT.—The failure of a claimant  
24 to timely file a claim under subsection (a) or with  
25 the appropriate Federal agencies under subsection

1 (b) shall be deemed to constitute an abandonment  
2 and a relinquishment of any rights purported to  
3 have been acquired under R.S. 2477 related to that  
4 claim.

5 (2) DETERMINATION AND NOTIFICATION.—If  
6 the authorized officer determines that a claimant  
7 has not met the filing deadline or the other filing re-  
8 quirements, the authorized officer shall notify the  
9 claimant and all other parties of record in writing  
10 and shall notify each appropriate Federal agency  
11 that no further action on the claim is required. The  
12 determination of the authorized officer shall con-  
13 stitute final agency action, subject to review in the  
14 United States District Court for the District of Co-  
15 lumbia or the United States District Court in the  
16 district within which the longest lineal portion of the  
17 claimed R.S. 2477 right-of-way lies.

18 (3) FILING.—Any action initiated in district  
19 court pursuant to paragraph (2) shall be filed not  
20 later than three years after the date of the written  
21 notice to the claimant from the authorized officer.

22 (4) LIMITED JUDICIAL REVIEW.—Judicial re-  
23 view of a determination of an authorized officer  
24 under paragraph (2) shall be limited to a review of  
25 the administrative record.

1 (d) COORDINATION AMONG APPROPRIATE FEDERAL  
2 AGENCIES.—In the review and processing of a valid claim  
3 under section 4, the authorized officer shall be responsible  
4 for coordinating with each appropriate Federal agency  
5 subject to the claim.

6 (e) LIMITATION.—Except with regard to a claim filed  
7 pursuant to this Act during the period specified in sub-  
8 section (a), no officer, agency, or court of the United  
9 States shall take any action to affirm the validity of any  
10 assertion that any person or entity other than the United  
11 States has a property interest in a right-of-way pursuant  
12 to R.S. 2477.

13 **SEC. 4. ADMINISTRATIVE DETERMINATION OF VALIDITY OF**  
14 **R.S. 2477 RIGHT-OF-WAY CLAIM.**

15 (a) BURDEN OF PROOF.—

16 (1) BURDEN ON CLAIMANT.—A claimant shall  
17 have the burden to prove that the grant of a right-  
18 of-way pursuant to R.S. 2477 was validly accepted  
19 and not abandoned.

20 (2) PRESUMPTION.—Any claim or portion of a  
21 claim involving lands that, as of the filing of the  
22 claim, are within a conservation system unit, an  
23 inventoried roadless area, or a wilderness study area  
24 or are former Federal lands shall be presumed to  
25 have been abandoned on the date on which the lands

1 became part of the conservation unit or inventoried  
2 roadless area, became subject to management as a  
3 wilderness study area, or became former Federal  
4 lands (whichever applies) unless the claimant estab-  
5 lishes, by clear and convincing evidence, that routine  
6 lawful maintenance and use of the lands for highway  
7 purposes on and after that date were so open and  
8 notorious that management of such lands by the  
9 United States or the transfer of ownership by the  
10 United States was intended to be subject to continu-  
11 ation of the use of the lands for highway purposes.

12 (b) CONTENTS OF CLAIM.—A claim shall contain suf-  
13 ficient information to permit the authorized officer to de-  
14 termine whether each element of R.S. 2477 was met. At  
15 a minimum, the claim shall contain the following:

16 (1) The name, affiliation, address, phone num-  
17 ber (and facsimile number if available) of the claim-  
18 ant.

19 (2) The names, affiliations, addresses, phone  
20 numbers (and facsimile numbers if available) of all  
21 persons or entities with property interests in land  
22 over which the claimed R.S. 2477 right-of-way lies.

23 (3) Proof of notification of the claim to all such  
24 persons and entities.

1           (4) Identification of the entity that would have  
2 a property interest in the claimed R.S. 2477 right-  
3 of-way.

4           (5) A description of the highway on which the  
5 claim is based, including identification of the high-  
6 way on an official State or local map, if available,  
7 the name and number of the highway, if available,  
8 beginning and ending points, a center-line survey  
9 conducted in accordance with the Bureau of Land  
10 Management Manual of Surveying Instructions  
11 (1973), type of surface, and width.

12           (6) Evidence of construction of the highway, in-  
13 cluding evidence of use of tools and of expenditures  
14 for highway construction.

15           (7) Evidence that the claimed route is a high-  
16 way, including evidence of routine maintenance by a  
17 State or local government public highway manage-  
18 ment agency and of public vehicular use.

19           (8) A statement of whether any photographs,  
20 profiles, constructions, as-built or similar detail  
21 maps or diagrams of the right-of-way, are available  
22 and, if so, where such material may be viewed or  
23 copies obtained.

24           (9) If the right-of-way has been the subject of  
25 a prior judicial or administrative determination, the

1 case or file identification number, the results of the  
2 last action taken, and the dates thereof.

3 (c) REVIEW OF CLAIM.—

4 (1) REVIEW BY AUTHORIZED OFFICER.—The  
5 authorized officer shall review the evidence sub-  
6 mitted by a claimant to determine whether a claim  
7 of a R.S. 2477 right-of-way contains sufficient evi-  
8 dence to prove construction and use of a highway  
9 over unreserved public lands prior to the latest avail-  
10 able date.

11 (2) DETERMINATIONS.—If the authorized offi-  
12 cer determines that a claim contains sufficient evi-  
13 dence to prove construction and use of a highway  
14 over unreserved public lands prior to the latest avail-  
15 able date, the authorized officer shall determine  
16 whether the R.S. 2477 right-of-way was subject to  
17 abandonment by the claimant.

18 (d) CONSULTATION.—

19 (1) IN GENERAL.—In conducting the review of  
20 a claim under subsection (c), the authorized officer  
21 shall consult with the appropriate Federal Agencies,  
22 as well as States and Tribal governments (and in  
23 the case of Alaska, Native Corporations, as defined  
24 in section 3 of the Alaska Native Claims Settlement

1 Act (43 U.S.C. 1602)) that own or control lands af-  
2 fected by the claimed R.S. 2477 right-of-way.

3 (2) NONSTATE CLAIMS.—In conducting the re-  
4 view of a claim brought by a claimant other than a  
5 State or political subdivision thereof, the authorized  
6 officer shall consult with each State and political  
7 subdivision thereof within which lands affected by  
8 the claim are located.

9 (e) DRAFT ADMINISTRATIVE DETERMINATION.—

10 (1) PREPARATION OF DRAFT.—After review of  
11 all the evidence submitted with respect to a claim,  
12 review of Bureau of Land Management official pub-  
13 lic land records, consultation under subsection (d),  
14 and concurrence by the appropriate Federal agen-  
15 cies, the authorized officer shall prepare a draft ad-  
16 ministrative determination regarding the claim.

17 (2) PROPOSED FINDINGS.—The draft adminis-  
18 trative determination shall include proposed findings  
19 regarding the following:

20 (A) Whether the grant of the right-of-way  
21 pursuant to R.S. 2477 over public lands not re-  
22 served for public uses was validly accepted prior  
23 to the latest available date.

24 (B) If the grant of the R.S. 2477 right-of-  
25 way over public lands not reserved for public

1 uses was validly accepted prior to the latest  
2 available date, whether the R.S. 2477 right-of-  
3 way was subject to abandonment by the claim-  
4 ant.

5 (C) If the grant of the R.S. 2477 right-of-  
6 way over public lands not reserved for public  
7 uses was validly accepted prior to the latest  
8 available date and was not subject to abandon-  
9 ment, a description of the accepted right-of-  
10 way, including its width, type of surface, and  
11 the route between the beginning and ending  
12 points of the right-of-way, as of the latest avail-  
13 able date.

14 (3) SUBMISSION.—The authorized officer shall  
15 submit the draft administrative determination to the  
16 claimant and publish a notice of the draft adminis-  
17 trative determination in a newspaper of general dis-  
18 tribution in the vicinity of the claim and in the Fed-  
19 eral Register. The notice shall request public com-  
20 ment only on the draft administrative determination.  
21 The public comment period shall last for a minimum  
22 of 60 days.

23 (f) FINAL ADMINISTRATIVE DETERMINATION.—

24 (1) REVIEW, CONSULTATION, AND PREPARA-  
25 TION.—Within one year after the date of publication

1 of the notice of the draft administrative determina-  
2 tion in the Federal Register, the authorized officer  
3 shall review the public comment, if any, and shall  
4 consult with each appropriate Federal agency. Upon  
5 concurrence by each appropriate Federal agency, the  
6 authorized officer shall prepare the final administra-  
7 tive determination.

8 (2) FINDINGS.—The final administrative deter-  
9 mination shall include the same findings required  
10 under subsection (e)(2).

11 (3) SUBMISSION.—The authorized officer shall  
12 submit the final administrative determination to the  
13 claimant and publish a notice of the final adminis-  
14 trative determination in the Federal Register.

15 (g) FINAL AGENCY ACTION; REVIEW.—

16 (1) AVAILABILITY OF JUDICIAL REVIEW.—A  
17 final administrative determination made pursuant to  
18 subsection (f) shall constitute final agency action  
19 subject to review in the United States District Court  
20 for the District of Columbia or the United States  
21 District Court in the district within which the long-  
22 est lineal portion of the claimed R.S. 2477 right-of-  
23 way lies.

24 (2) FILING.—Any action initiated in district  
25 court pursuant to paragraph (1) shall be filed not

1 later than three years after the date of the publica-  
2 tion in the Federal Register of the notice of the final  
3 administrative determination.

4 (3) LIMITED JUDICIAL REVIEW.—Judicial re-  
5 view of a final administrative determination shall be  
6 limited to a review of the administrative record.

7 (4) ELECTION TO ACQUIRE.—If judicial review  
8 of an administrative determination results in a de-  
9 termination that the grant of a right-of-way pursu-  
10 ant to R.S. 2477 was validly accepted and not aban-  
11 doned, the United States nevertheless may retain  
12 such exclusive possession or control of the lands tra-  
13 versed by such right-of-way or any part thereof as  
14 it may elect, upon payment to the claimant of an  
15 amount the district court in the same action deter-  
16 mines to be just compensation for such exclusive  
17 possession or control.

18 (h) RECORDING REQUIREMENTS REGARDING VALID  
19 R.S. 2477 RIGHT-OF-WAY.—

20 (1) SURVEY AND FILING.—Within five years  
21 after the date of publication in the Federal Register  
22 of a final administrative determination recognizing a  
23 valid R.S. 2477 right-of-way, the claimant shall file  
24 the center-line survey of such right-of-way with the

1 State office of the Bureau of Land Management and  
2 with the appropriate land records of the State.

3 (2) ABANDONMENT.—The failure of any claim-  
4 ant to complete a center-line survey and to file such  
5 survey with the Bureau of Land Management within  
6 the time period specified in paragraph (1) shall be  
7 deemed to constitute an abandonment and a relin-  
8 quishment of any rights purported to have been ac-  
9 quired under R.S. 2477.

10 (i) OPTION TO ACQUIRE.—If, within the period speci-  
11 fied in subsection (h)(1), a center-line survey is filed for  
12 a right-of-way across lands owned or controlled by the  
13 United States, the authorized officer, on behalf of the  
14 United States, may elect to retain such exclusive posses-  
15 sion or control of the lands traversed by such right-of-way  
16 or any part thereof as the authorized officer may elect,  
17 upon payment by the United States to the claimant of an  
18 amount the United States District Court for the district  
19 within which the longest lineal portion of the lands in-  
20 volved are located determines to be just compensation for  
21 such exclusive possession or control.

22 **SEC. 5. LAW GOVERNING ADMINISTRATIVE DETERMINA-**  
23 **TIONS.**

24 (a) RELATIONSHIP OF FEDERAL AND STATE LAW.—  
25 In making an administrative determination of whether the

1 grant of a right-of-way pursuant to R.S. 2477 over unre-  
2 served public lands was validly accepted prior to the latest  
3 available date, and in determining the scope of any right-  
4 of-way so validly accepted, the authorized officer shall  
5 apply Federal law and the law of the State in which the  
6 claimed right-of-way is located, and which was in effect  
7 on the latest available date, to the extent that such State  
8 law is consistent with Federal law.

9 (b) EFFECT OF PRIOR ADJUDICATIONS.—If the va-  
10 lidity of any portion of a claimed R.S. 2477 right-of-way  
11 across lands owned or controlled by the United States has  
12 been adjudicated by a court of competent jurisdiction be-  
13 fore the date of the enactment of this Act in a matter  
14 in which the United States was a party, the authorized  
15 officer shall recognize such adjudication.

16 **SEC. 6. RELATIONSHIP TO FEDERAL LAND POLICY AND**  
17 **MANAGEMENT ACT OF 1976 AND ALASKA NA-**  
18 **TIONAL INTEREST LANDS CONSERVATION**  
19 **ACT.**

20 Nothing in this Act is intended to, or shall be con-  
21 structed to, affect, change, alter, or modify title V of the  
22 Federal Land Policy and Management Act of 1976 (43  
23 U.S.C. 1761 et seq.) or title XI of the Alaska National  
24 Interest Lands Conservation Act (16 U.S.C. 3161 et seq.).

○