Searching for a Map to Navigate Roads Debate

Governor Suggests 'Common Ground' Solution

Imagine the confusion that would result if the county recorder's office burned down and ownership records for the entire community were lost. Utah finds itself in a somewhat similar situation with respect to county roads.

Our mostly rural transportation system used by ranchers, miners, hikers, hunters, federal land managers, county officials, tourists and others is caught in a divisive and costly legal battle over rights of way on potentially thousands of roads.

MICHAEL LEAVITT

R.S. 2477 roads, named after the federal law that created the rights of way, are a complex problem with a simple origin. In 1866, Congress passed a law that granted the public rights of way over federal land. During the next 110 years, thousands of roads were built as our nation's policy to "settle the West" came to fruition.

When Congress repealed the law as part of the Federal Land Policy and Management Act of 1976, the federal government acknowledged the rights of way for roads built prior to 1976, but did not identify which roads carried this blanket grant.

The result has been nearly 30 years of continual confusion and confrontation; much like what would happen if the county recorder's office were destroyed.

Polarized extreme positions are not productive in solving complex problems like this one. Phrases like "bulldozing the West" or "secret negotiations, behind closed doors" or "they're giving away our rights" are neither true nor productive. People of goodwill can join in an open process to seek common ground on the vast majority of roads for which there is indisputable information about their history, use and existence outside protected environmental areas.

The agreement Secretary of the Interior Gale Norton and I signed on April 9 provides a framework for decision-making. The centerpiece of the agreement is an open administrative process that permits the sharing of information and gives everyone an opportunity to comment before decisions are made. Instead of litigation, which is a closed process decided by the courts, we have opted for an open administrative process. Those who represent otherwise are wrong.

The agreement includes seven touchstones to determine which roads qualify for consideration. Those who claim that this agreement will result in converting trails in national parks or wilderness areas into paved superhighways are simply not telling the truth.

This is the truth: Unless a road can be documented as existing before 1976 and is still traveled routinely by car or truck, it is not being claimed under this agreement. If a road is in a national park, wilderness area or even a wilderness study area, we are not claiming it.

Do the counties or state plan to expand these roads? No. The agreement defines the roads by their existing use within the existing disturbance. Any use beyond ordinary maintenance will go through environmental review.

In the public discussion about R.S. 2477 county roads, you will hear disturbing accusations about state and county efforts to solve this problem. Pay careful attention because a closer examination will reveal that the state, in consultation with every county, is taking a common sense, common ground approach. We desire to secure our transportation system, protect Utah's most important scenic areas and honor vested property rights.

After three decades of polarization, conflict, cultural division, litigation, economic uncertainty and expense, it's time for a sensible solution.

Activist Says Governor's Process Is Flawed, Unfair

R.S. 2477 says, "the right of way for the construction of highways . . . is hereby granted."

Throughout the West, this short, seemingly simple statute has taken center stage in the debate over the future of our national parks, wilderness areas and the incomparable Utah canyon country proposed for wilderness protection in America's Redrock Wilderness Act.

HEIDI MCINTOSH

Let's start with what this issue is not about — roads. Instead, much of the argument is about whether dry wash beds, off-road vehicle tracks, hiking trails and cow paths are really "highways" under this tired, old federal law enacted in 1866. The state and some counties say that as many as 15,000 of these tracks are, and they have spent $8 million of your dollars trying to prove it. All in the hope that these "highways" will disqualify vast, spectacularly scenic territory from congressional protection as wilderness or other protective status.

That's why this is so important.

There's no doubt that there are legitimate R.S. 2477 claims. The famous Burr Trail and the Buckhorn Wash Road are just two examples. And we applaud an approach that involves sitting around the table to resolve differences.

In fact, we are such big fans of that approach, we have been trying to get into Gov. Mike Leavitt's secret R.S. 2477 discussions with the Interior Department for two years. And we have spent plenty of time talking with counties — until the governor's lawyers told them to stop talking about where their highways were. (Really.)

Negotiation is always preferable to litigation. But to be fair, effective and legal, all stakeholders must be invited, and the law has to provide the foundation for discussion. Unfortunately, the governor's process offers neither, and must be fixed.

Importantly, the governor's test focuses largely on whether a route is "used" — an approach specifically rejected by the courts. Instead, courts focus on the word employed in the R.S. 2477 statute — "construction." In 2001, Utah's U.S. District Judge Tena Campbell wrote, "Congress in 1866 desired that R.S. 2477 rights of way be intentionally, physically worked on to produce a surface conducive to public traffic." (Interior relied on this test for decades.) Judge Campbell also ruled that "use" "sets a lower standard . . . than the one intended by Congress."

The judge also held that the route had to be a "highway" that "connects the public with identifiable destinations or places." Gov. Leavitt overlooks this aspect of the test — because using the real test means that thousand of tracks won't qualify as "highways," as they shouldn't.

Other loopholes and fine print plague the agreement between Gov. Leavitt and Secretary of the Interior Gale Norton. It does not waive any alleged rights to assert that the hiking trails the state of Utah already claimed in every national park are actually roads. The governor just says he won't use this agreement to pursue them, leaving future litigation an unspoken option. Nor does the agreement bind the counties, the most vociferous R.S. 2477 advocates. And the belatedly promised public input does little good after a two-year secret process in which biased standards dictate the outcome.

We can do better. Only through balance reached through truly open public processes and recognition of legal principles will we be able as a nation to preserve some of the most beautiful places on Earth.

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