

109TH CONGRESS
1ST SESSION

H. R. 3447

To provide a means of resolving claims regarding the continued existence of rights-of-way under former section 2477 of the Revised Statutes, for the benefit of private landowners, State and local governments, and the public.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2005

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

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, for the benefit of private landowners, State and local governments, and the public.

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 “Highway Claims Resolution Act of 2005”.

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

7 (1) In 1866, to assist in the opening of the
8 West for resource development and settlement, Con-

1 gress enacted a law that granted rights-of-way for
2 the construction of highways across public land not
3 reserved for public uses. That law was later included
4 in the Revised Statutes as section 2477 and thus be-
5 came 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7 Management Act of 1976 repealed R.S. 2477, but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) Between 1866 and 1976, millions of acres
11 of Federal lands were transferred to private parties
12 under the Homestead Act and other laws, while ad-
13 ditional millions of acres of Federal lands were
14 transferred to States and other parties.

15 (4) R.S. 2477 did not require notifying the
16 Federal Government or any other entity regarding
17 utilization of specific grants of highway rights-of-
18 way or documentation in the public land records re-
19 garding claims for such grants.

20 (5) Therefore, the number and location of
21 claimed highway rights-of-way under R.S. 2477 are
22 unknown. However, it is estimated that potential
23 claims for such rights-of-way could involve thou-
24 sands of square miles, including lands now owned by
25 private parties, States, and other non-Federal enti-

1 ties as well as large amounts of Federal lands, in-
2 cluding lands now used for military training and
3 testing and other national defense purposes as well
4 as lands that have been included in the National
5 Forest System, National Park System, National
6 Wildlife Refuge System, and National Wilderness
7 Preservation System.

8 (6) In recent years, controversies have arisen as
9 to whether certain claimed routes are valid highway
10 rights-of-way under R.S. 2477. This causes uncer-
11 tainty both for parties claiming to possess a prop-
12 erty interest in such routes and for the owners and
13 managers of the lands affected by such claimed
14 routes.

15 (7) Controversies related to claims under R.S.
16 2477 have been exacerbated by the absence of uni-
17 form Federal standards for review of such claims
18 and by court decisions that have failed to provide
19 consistent guidance. To address these problems, in
20 1992, Congress directed the Secretary of the Inte-
21 rior to study the history, impacts, and status of R.S.
22 2477 rights-of-way, study alternatives to such
23 rights-of-way, and make recommendations for as-
24 sessing claims for such rights-of-way.

1 (8) Pursuant to this directive, officials of the
2 Department of the Interior consulted with interested
3 parties in the public land States and held public
4 hearings in Alaska, California, Idaho, Oregon, Mon-
5 tana, Nevada, and Utah. In addition, the Depart-
6 ment received and reviewed more than 4,000 pages
7 of written comments.

8 (9) In June 1993, the Department of the Inte-
9 rior released the report of the results of its study to
10 Congress. The report highlighted the need for a
11 process whereby validly accepted rights-of-way could
12 be recognized and administered consistently and
13 fairly and recommended establishment of a uniform
14 administrative procedure and standards for deter-
15 mining within a specified period which claimed
16 rights-of-way were validly accepted under the R.S.
17 2477 grant from the Federal Government.

18 (10) It is in the interest of all who might be af-
19 fected, including private landowners, State and local
20 governments, and the public to provide consistent,
21 coherent guidance regarding evaluation and timely
22 resolution of claims for rights-of-way based on R.S.
23 2477.

24 (c) PURPOSE.—The purpose of this Act is to provide
25 certainty to affected private landowners, State and local

1 governments, and the public by establishing a deadline for
2 filing of claims for highway rights-of-way under R.S. 2477
3 and providing a process for consideration and resolution
4 of such claims.

5 **SEC. 2. DEFINITIONS.**

6 In this Act:

7 (1) The term “appropriate Federal agency”
8 means any Federal agency having management ju-
9 risdiction over lands owned or controlled by the
10 United States upon which a R.S. 2477 right-of-way
11 is claimed to exist.

12 (2) The term “authorized officer” means the a
13 person designated by the Secretary of the Interior to
14 perform the duties of an authorized officer pursuant
15 to this Act with respect to a claim. If a claim in-
16 volves Federal lands under the management jurisdic-
17 tion of a Department or Departments other than the
18 Department of the Interior, the Secretary shall con-
19 sult with and obtain the concurrence of the head of
20 each such other Department with respect to the ap-
21 pointment of the authorized officer.

22 (3) The term “claim” means the appropriate
23 documentation filed under section 3 asserting the ex-
24 istence of, and a property interest in, a right-of-way
25 pursuant to R.S. 2477.

1 (4) The term “claimant” means any State, po-
2 litical subdivision of a State, or any other person or
3 entity asserting the existence and validity of a right-
4 of-way pursuant to R.S. 2477, except a person or
5 entity who, as of the date of enactment of this Act,
6 was barred from bringing a civil action against the
7 United States under section 2409a of title 28,
8 United States Code, to adjudicate the title to the
9 relevant lands.

10 (5) The term “conservation lands” means lands
11 that are within a conservation system unit, an inven-
12 toried roadless area, a wilderness inventory area, or
13 a wilderness study area.

14 (6) The term “conservation system unit”
15 means—

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

17 (B) a unit of the National Wildlife Refuge
18 System;

19 (C) a component of the National Wild and
20 Scenic Rivers System;

21 (D) a component of the National Trails
22 System;

23 (E) a component of the National Wilder-
24 ness Preservation System;

25 (F) a National Monument; or

1 (G) any part of the National Landscape
2 Conservation System.

3 (7) The term “construction” means an inten-
4 tional physical act, or series of intentional physical
5 acts, using mechanical tools, intended to prepare,
6 and that accomplished preparation of, a highway by
7 a durable, observable, physical modification of land
8 to facilitate its use as a highway.

9 (8) The term “county” means the primary po-
10 litical subdivision of a State, including a borough in
11 Alaska and a parish in Louisiana.

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

15 (10) The term “highway” means a significant
16 thoroughfare along a specific identified route that,
17 prior to the latest available date, was used by the
18 public, without discrimination against any individual
19 or group, for the passage of vehicles carrying people
20 or goods from one place to another place.

21 (11) The term “inventoried roadless area”
22 means one of the areas identified in the set of inven-
23 toried roadless areas maps contained in the Forest
24 Service Roadless Areas Conservation, Final Environ-

1 mental Impact Statement, Volume 2, dated Novem-
2 ber 2000.

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

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

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

17 (C) the date on which title vested in a per-
18 son or entity other than the United States in
19 the case of former Federal lands.

20 (13) The term “Native Corporation” has the
21 same meaning as specified in section 3 of the Alas-
22 kan Native Claims Settlement Act (43 U.S.C. 1602).

23 (14) The terms “public lands not reserved for
24 public uses” and “unreserved public lands” mean
25 lands owned by the United States that were avail-

1 able and open to the public under various public
2 land laws that provided for disposition to the public,
3 including lands that had not yet been set aside, dedi-
4 cated, withdrawn, reserved, settled, preempted, en-
5 tered, appropriated, or disposed of, or on which
6 claims had not been located.

7 (15) The term “R.S. 2477” means section 2477
8 of the Revised Statutes, which was codified as sec-
9 tion 932 of title 43, United States Code, prior to its
10 repeal by section 706 of the Federal Land Policy
11 and Management Act of 1976 (Public Law 94–579;
12 90 Stat. 2793).

13 (16) The term “survey” means the identifica-
14 tion of a highway using methods consistent with
15 State and Federal cadastral survey standards, where
16 Federal Geographic Data Committee metadata
17 standards are used to document the accuracy of the
18 determined location of the highway and width so
19 that said determined location of the highway will not
20 be inappropriately used for cadastral surveying pur-
21 poses.

22 (17) The term “wilderness inventory area”
23 means an area of public lands determined by the
24 Bureau of Land Management to be an area pos-
25 sessing wilderness character or wilderness character-

1 istics through inventories conducted pursuant to sec-
2 tion 201 of the Federal Land Policy and Manage-
3 ment Act of 1976 (43 U.S.C. 1702).

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

13 **SEC. 3. FILING OF A NOTICE OF CLAIM.**

14 (a) OPPORTUNITY TO FILE NOTICE OF A CLAIM.—
15 During the 4-year period beginning on the date of the en-
16 actment of this Act, a claimant asserting the existence and
17 validity of a right-of-way pursuant to R.S. 2477 across
18 lands owned or controlled by the United States or former
19 Federal lands may file a notice of a claim to that effect
20 pursuant to this section.

21 (b) CONTENTS OF A NOTICE OF A CLAIM.—A notice
22 of a claim filed under subsection (a) shall state the name
23 and address of the claimant, provide a general description
24 and general map of the location of the claimed R.S. 2477
25 right-of-way, and identify the county or counties in which

1 the right-of-way is claimed. A notice of claim filed under
2 subsection (a) involving former Federal lands shall include
3 the names of the owners of record of such lands.

4 (c) PLACE OF FILING.—

5 (1) INTERIOR DEPARTMENT.—A claimant may
6 file the notice of a claim either in the office of the
7 Secretary of the Interior in Washington, DC, or in
8 an office designated by the Secretary of the Interior
9 pursuant to paragraph (2) in each State where lands
10 are located upon which the R.S. 2477 right-of-way
11 is claimed to exist.

12 (2) STATE OFFICES.—No later than 30 days
13 after the date of enactment of this Act, the Sec-
14 retary of the Interior shall identify offices where no-
15 tices of claims may be filed in Alaska, Arizona, Cali-
16 fornia, Colorado, Idaho, Montana, Nevada, New
17 Mexico, Oregon, Utah, Washington, and Wyoming
18 and in addition may identify such offices in such
19 other States as the Secretary considers appropriate.

20 (3) OTHER FEDERAL DEPARTMENTS.—If a no-
21 tice filed pursuant to this section involves lands
22 owned by the United States, the Secretary of the In-
23 terior shall provide a copy of each notice to the head
24 of each Federal agency responsible for control or
25 management of such lands and, in the case of a no-

1 tice involving lands controlled by the Department of
2 Defense, also to the commanding officer of the mili-
3 tary installation having real property accountability
4 for such lands.

5 (4) FORMER FEDERAL LANDS.—In the case of
6 a claim involving former Federal lands, the claimant
7 shall provide to the current owner of record of the
8 lands a copy of the notice of the claim as filed pur-
9 suant to this section.

10 (5) COUNTY FILING.—A claimant shall provide
11 a copy of the notice of a claim or claims to the coun-
12 ty or counties where any portion of the claimed
13 right-of-way is purported to exist.

14 (6) AUTHORIZED OFFICER.—No later than 30
15 days after receipt from a claimant of a notice filed
16 pursuant to this section, the Secretary of the Inte-
17 rior shall notify the claimant regarding the identity
18 of the authorized officer who will be responsible for
19 the claim.

20 (d) PUBLICATION OF FILING.—The authorized offi-
21 cer shall regularly post the filings of notices of claims on
22 the authorized officer's agency Web site, shall publish in
23 the Federal Register a monthly list of the notices of claims
24 filed by State, shall monthly provide relevant counties a
25 list of the notices of claims filed within those counties, and

1 shall monthly publish a list of the notices of claims in a
2 newspaper of general distribution in the vicinity of such
3 claims. To the extent practicable, the authorized officer
4 shall also seek to specifically notify the current owners of
5 former Federal lands concerning claims affecting such
6 lands.”

7 (e) EFFECT OF FAILURE TO MEET NOTICE OF A
8 CLAIM FILING DEADLINE.—

9 (1) DEEMED RELINQUISHMENT OF RIGHTS.—

10 The failure of a claimant to timely file a notice of
11 a claim pursuant to this section shall be deemed to
12 constitute a relinquishment of any rights purported
13 to have been acquired under R.S. 2477 related to
14 that claim.

15 (2) REVIEW.—A deeming of a relinquishment
16 pursuant to paragraph (1) shall be subject to review
17 in the United States District Court for the District
18 of Columbia or the United States District Court in
19 the district within which the longest lineal portion of
20 an affected claim lies. Any action initiated in district
21 court pursuant to this paragraph shall be filed not
22 later than the date that is 7 years after the date of
23 enactment of this Act.

24 (f) EXEMPTION.—This section shall not apply with
25 respect to any claim or assertion based on R.S. 2477 that

1 has been the subject of any final determination of any
2 Federal court or agency. For purposes of this Act,
3 issuance of a document of disclaimer of interest or inter-
4 ests pursuant to section 315 of the Federal Land Policy
5 and Management Act of 1976 (43 U.S.C. 1745) shall not
6 constitute a final determination of a Federal agency.

7 **SEC. 4. OPPORTUNITY TO SUBMIT EVIDENCE IN SUPPORT**
8 **OF CLAIM.**

9 (a) DEADLINE.—Any claimant who timely files a no-
10 tice of a claim pursuant to section 3(a) shall submit evi-
11 dence in support of such claim no later than 6 years after
12 the date of the filing of such notice of claim.

13 (b) REQUIREMENTS.—Evidence submitted to the au-
14 thorized officer pursuant to subsection (a) shall include
15 at least 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, as
22 shown on the real estate records of the counties in
23 which any portion of the claimed R.S. 2477 right-
24 of-way is located, over which the claimed R.S. 2477

1 right-of-way lies, or counties that might claim some
2 right, title, or interest in the right of way.

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

5 (4) Identification of the entity that would have
6 a property interest in the claimed R.S. 2477 right-
7 of-way.

8 (5) A description of the highway on which the
9 claim is based, including identification of the high-
10 way on an official State or local map, if available,
11 the name and number of the highway, if available,
12 beginning and ending points, existing surveys of the
13 highway, or portions thereof, or a survey of the
14 highway.

15 (6) Evidence that the claimed route is a high-
16 way.

17 (7) Evidence of construction of the highway,
18 which may include evidence of monetary expendi-
19 tures for highway construction.

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

1 (9) Evidence that the claimed right-of-way tra-
2 versed public land not reserved for public use at the
3 time construction of the highway occurred.

4 (c) ADDITIONAL EVIDENCE FOR CLAIMS INVOLVING
5 CONSERVATION LANDS, TRIBAL LANDS, DEPARTMENT OF
6 DEFENSE LANDS, AND FORMER FEDERAL LANDS.—In
7 addition to the evidence required in subsection (b), claim-
8 ants must also provide additional evidence when either of
9 the following applies to the claim:

10 (1) Where any portion of the claimed right-of-
11 way involves conservation lands, tribal lands, and
12 Department of Defense lands, evidence must be sub-
13 mitted to show that prior construction and con-
14 tinuing use of the lands for highway purposes were
15 so open and notorious on and after the date on
16 which the lands acquired such status that manage-
17 ment of such lands by the United States was in-
18 tended to be subject to continuation of the use of the
19 lands for highway purposes.

20 (2) Where any portion of the claimed right-of-
21 way involves former Federal lands, evidence must be
22 submitted to show that prior construction and con-
23 tinuing use of the lands for highway purposes were
24 so open and notorious on and after the date on
25 which the lands became former Federal lands that

1 the transfer of ownership by the United States was
2 intended to be subject to continuation of the use of
3 the lands for highway purposes.

4 (d) OPPORTUNITY TO SUPPLEMENT EVIDENCE.—If
5 the authorized officer determines that the evidentiary re-
6 quirements of this section have not been fully met with
7 regard to a claim, the authorized officer shall, within 10
8 days after the date in subsection (a), issue an order advis-
9 ing the claimant of the deficiencies and providing the
10 claimant an opportunity to provide supplementary evi-
11 dence within 30 days of the date of such order. If the
12 claimant fails to provide supplementary evidence by the
13 end of the 30 days, or if the authorized officer determines
14 that supplementary evidence provided within the 30 days
15 is insufficient, the authorized officer shall issue a final ad-
16 ministrative determination that the claim is deemed to
17 have been abandoned and that any rights purported to
18 have been acquired under R.S. 2477 with respect to the
19 claim have been relinquished and that therefore no further
20 administrative action is required with respect to the claim.
21 The authorized officer shall submit such final administra-
22 tive determination to the claimant and shall provide gen-
23 eral notification as per the requirements of section 3(d).
24 Such determination shall constitute final agency action

1 and shall be subject to judicial review pursuant to section
2 5(j).

3 **SEC. 5. DETERMINATIONS BY AUTHORIZED OFFICER.**

4 (a) REVIEW OF EVIDENCE.—If the authorized officer
5 determines that a claimant has submitted all the required
6 evidence with respect to a claim within the time allowed
7 for such submission, the authorized officer shall review the
8 evidence in order to determine whether the claim should
9 be considered presumptively valid.

10 (b) BURDEN OF PROOF.—In all cases, a claimant
11 shall have the burden to prove by a preponderance of the
12 evidence that the grant of a right-of-way pursuant to R.S.
13 2477 was validly accepted.

14 (c) PRIVATE AND OTHER NON-FEDERAL LANDS.—
15 If a claim or portion of a claim involves lands that as of
16 the time of the filing of the notice of the claim are former
17 Federal lands, the authorized officer shall determine the
18 claim to be presumptively valid if the claimant has met
19 the burden of proof specified in subsection (b) and has
20 demonstrated by clear and convincing evidence that on the
21 date on which the lands became former Federal lands
22 prior construction and continuing use of the claimed lands
23 for highway purposes were so open and notorious that
24 transfer of the lands by the United States was intended

1 to be subject to the continued use of the claimed lands
2 for highway purposes.

3 (d) CONSERVATION AND DEFENSE LANDS.—If a
4 claim or portion of a claim involves lands that as of the
5 time of the filing of the notice of the claim are conserva-
6 tion lands or defense lands, the authorized officer shall
7 determine the claim to be presumptively valid if the claim-
8 ant has met the burden of proof specified in subsection
9 (b) and has demonstrated by clear and convincing evidence
10 that on the date on which the lands acquired such status
11 prior construction and continuing use of the claimed lands
12 for highway purposes were so open and notorious that it
13 was intended that management of the lands for conserva-
14 tion or defense purposes would be subject to the continued
15 use of the claimed lands for highway purposes.

16 (e) TRIBAL LANDS.—If a claim or portion of a claim
17 involves lands that as of the time of the filing of the notice
18 of the claim are tribal lands, the authorized officer shall
19 determine the claim to be presumptively valid if the claim-
20 ant has met the burden of proof specified in subsection
21 (b) and has demonstrated by clear and convincing evidence
22 that on the date on which the lands acquired such status
23 prior construction and continuing use of the claimed lands
24 for highway purposes were so open and notorious that it

1 was intended that use of the claimed lands for highway
2 purposes would continue.

3 (f) OTHER LANDS.—If no portion of a claim involves
4 former Federal lands, conservation lands, defense lands,
5 or tribal lands, the authorized officer shall determine the
6 claim to be presumptively valid if the claimant has met
7 the burden of proof specified in subsection (b).

8 (g) DETERMINATIONS.—

9 (1) GENERAL RULE.—If the authorized officer
10 is unable to determine that a claim is presumptively
11 valid, the authorized officer shall determine that the
12 claim is invalid and that any rights purported to
13 have been acquired under R.S. 2477 with respect to
14 the claim have been relinquished and that therefore
15 no further administrative action on the claim is re-
16 quired.

17 (2) NOTIFICATION.—The authorized officer
18 shall notify in writing the claimant and each appro-
19 priate Federal agency and tribe regarding each de-
20 termination made pursuant to paragraph (1), and
21 shall provide general notification to the public and
22 affected parties of such determination pursuant to
23 the requirements of section 3(d).

24 (3) FINAL AGENCY ACTION; REVIEW.—A deter-
25 mination of the authorized officer pursuant to para-

1 graph (1) shall constitute final agency action, sub-
2 ject to review in the United States District Court for
3 the District of Columbia or the United States Dis-
4 trict Court in the district within which the longest
5 lineal portion of the claimed R.S. 2477 right-of-way
6 lies.

7 (4) FILING; LIMITED REVIEW.—Any action ini-
8 tiated in district court pursuant to paragraph (3)
9 shall be filed not later than 3 years after the date
10 of the written notice to the claimant from the au-
11 thorized officer. Judicial review of a determination
12 of an authorized officer under paragraph (3) shall be
13 limited to a review of the administrative record.

14 (5) If the authorized officer determines that a
15 claim is presumptively valid, the authorized officer
16 shall follow the procedures specified in subsection
17 (h).

18 (h) PRESUMPTIVELY VALID CLAIMS.—If the author-
19 ized officer determines that a claim is presumptively valid,
20 the authorized officer shall follow the following proce-
21 dures:

22 (1) If the authorized officer determines that a
23 claimant has submitted all the required evidence,
24 and has met the relevant burden of proof as re-
25 quired in this section with respect to a claim, the au-

1 thorized officer, subject to the requirement of section
2 6(g)(2), shall make a determination that the claim
3 is presumptively valid. Within 10 days after such de-
4 termination, the authorized officer shall notify the
5 claimant, each affected Federal agency, each county
6 or other political subdivision within which any por-
7 tion of such claim is located, and the public and af-
8 fected parties pursuant to section 3(d) regarding
9 each determination that a claim is presumptively
10 valid, and shall provide an opportunity for any per-
11 son or entity to file an objection to the determina-
12 tion.

13 (2) If within 180 days after the authorized offi-
14 cer's providing of notice pursuant to paragraph (1),
15 the authorized officer receives an objection to the de-
16 termination, the authorized officer shall notify the
17 claimant of such objection and of the opportunity to
18 provide a response thereto.

19 (3) During the period of 30 days after receipt
20 of a notification pursuant to paragraph (2), a claim-
21 ant shall be allowed to provide supplementary evi-
22 dence to the authorized officer that responds to the
23 objection.

24 (i) PUBLIC HEARING.—

1 (1) HEARING AT REQUEST OF PARTIES.—If ei-
2 ther the claimant or an objector submits a timely re-
3 quest for a public hearing regarding an objection to
4 a determination that a claim is presumptively valid,
5 the authorized officer shall conduct such a hearing
6 at a convenient time and location within the county
7 where the longest segment of the claim covered by
8 such a determination is located.

9 (2) TIMELY REQUESTS.—A request for a public
10 hearing described in paragraph (1) shall be consid-
11 ered timely if received by the authorized officer no
12 later than 40 days after receipt by the requesting
13 party of a notice pursuant to subsection (h)(2), or
14 by the objector if requested within 40 days after the
15 objection has been made pursuant to subsection
16 (h)(2).

17 (3) PROCEDURE.—In conducting public hear-
18 ings pursuant to this subsection, an authorized offi-
19 cer shall afford claimants and objectors an oppor-
20 tunity to present evidence and shall allow the public
21 an opportunity to comment and provide evidence
22 supporting or opposing a determination that a claim
23 is presumptively valid.

24 (j) REVIEW.—

1 (1) IN GENERAL.—The authorized officer shall
2 review all information submitted by a person or enti-
3 ty filing an objection and any information provided
4 by any participant in a public hearing held pursuant
5 to subsection (i) and after such review shall decide
6 whether to affirm or revoke the previous determina-
7 tion that a claim is presumptively valid.

8 (2) REVOCATION OF PREVIOUS DETERMINA-
9 TION.—If the authorized officer decides to revoke a
10 previous determination that a claim is presumptively
11 valid, the authorized officer shall issue a determina-
12 tion pursuant to subsection (g)(1).

13 (3) ISSUANCE OF DETERMINATION OF VALIDI-
14 TY.—If the authorized officer decides to affirm the
15 previous determination that a claim is presumptively
16 valid, the authorized officer shall issue a determina-
17 tion of validity.

18 (k) DETERMINATIONS OF VALIDITY.—

19 (1) TIME FOR ISSUANCE.—If no party submits
20 a timely objection to a determination that a claim is
21 presumptively valid, the authorized officer shall issue
22 a determination that the claim is valid within 10
23 days after expiration of the opportunity to object in
24 subsection (h)(2).

1 (2) FINAL AGENCY ACTION; REVIEW.—A deter-
2 mination issued pursuant to this subsection shall
3 constitute final agency action, subject to review in
4 the United States District Court for the District of
5 Columbia or the United States District Court in the
6 district within which the longest lineal portion of the
7 lands affected by the claim is located. Any action
8 initiated in district court pursuant to this paragraph
9 shall be filed not later than 3 years after the date
10 of the issuance of such determination. Judicial re-
11 view of a determination under this subsection shall
12 be limited to a review of the administrative record.

13 (1) FINDINGS.—Any determination of validity or pre-
14 sumptive validity shall include the following:

15 (1) The basis for concluding that the grant of
16 the right-of-way pursuant to R.S. 2477 over public
17 lands not reserved for public use was validly accept-
18 ed prior to the latest available date.

19 (2) A description of the valid or presumptively
20 valid right-of-way, including its width, type of sur-
21 face, and the route between the beginning and end-
22 ing points of the right-of-way, as of the latest avail-
23 able date.

24 (3) A description of the consultation carried out
25 pursuant to section 6(g) and any necessary affirma-

1 tion of concurrence by any relevant and appropriate
2 Federal agency and tribe.

3 **SEC. 6. PROCEDURES.**

4 (a) **FEE EXEMPTION.**—No State, county, or local
5 government shall be charged a fee for the filing of a claim.

6 (b) **PRIORITIES.**—In reviewing and processing claims,
7 the authorized officer shall afford priority consideration
8 as follows:

9 (1) First priority shall be given to claims filed
10 by a State, county, or local government.

11 (2) Second priority shall be given to claims filed
12 by a party other than a State, county, or local gov-
13 ernment and involving private or other non-Federal
14 lands, conservation lands, defense lands, or tribal
15 lands.

16 (3) Third priority shall be given to all other
17 claims.

18 (c) **TIMING.**—

19 (1) **TIME FOR COMPLETION OF REVIEW.**—To
20 the extent practicable, the authorized officer shall
21 complete the review of a claim within 1 year after
22 the claimant has submitted evidence in support of
23 the claim.

24 (2) **STATUS REPORT.**—For all claims where a
25 review has not been completed within 1 year, the au-

1 thorized officer shall provide the claimant a brief
2 status report explaining the reasons for the delay
3 and shall provide a public notice of the status report
4 in the same manner as provided in section 3(d).

5 (d) PARTICIPATION OF STATES, COUNTIES, LOCAL
6 GOVERNMENTS, AND OTHERS.—

7 (1) IN GENERAL.—In conducting the review of
8 a claim, the authorized officer shall seek and con-
9 sider the views of affected States, counties, local
10 governments, and tribal governments as well as ap-
11 propriate Federal agencies and the public.

12 (2) COORDINATION AMONG APPROPRIATE FED-
13 ERAL AGENCIES.—In the review of a claim, the au-
14 thorized officer shall be responsible for coordinating
15 with each appropriate Federal agency subject to the
16 claim.

17 (3) ALASKA CLAIMS.—With respect to claims
18 involving lands in Alaska, the authorized officer
19 shall also seek the views of and consult with any Na-
20 tive Corporation owning or controlling lands affected
21 by a claim.

22 (e) ELECTIONS TO ACQUIRE.—

23 (1) RETENTION BY UNITED STATES.—

24 (A) If judicial review of a determination
25 made pursuant to this Act with respect to a

1 claim involving conservation lands, tribal lands,
2 or defense lands results in a determination that
3 a grant of a right-of-way pursuant to R.S. 2477
4 was validly accepted and not relinquished, the
5 United States nevertheless may retain such ex-
6 clusive possession or control of any conservation
7 lands, tribal lands, or defense lands traversed
8 by such right-of-way as it may elect, upon pay-
9 ment to the claimant of an amount the district
10 court in the same action determines to be just
11 compensation for such exclusive possession or
12 control.

13 (B) Before taking any action pursuant to
14 subparagraph (A), the United States shall seek
15 to reach an enforceable agreement with the
16 claimant that will resolve the concerns that oth-
17 erwise would be resolved by such action.

18 (2) RETENTION BY OWNER OF RECORD.—

19 (A) IN GENERAL.—If judicial review of a
20 determination made pursuant to this Act with
21 respect to a claim involving former Federal
22 lands results in a determination that a grant of
23 a right-of-way pursuant to R.S. 2477 was val-
24 idly accepted by a party other than a State or
25 a county or other political subdivision of a State

1 and not relinquished by such party, the owner
2 or owners of record of such former Federal
3 lands nevertheless may retain such exclusive
4 possession or control of any such lands tra-
5 versed by such right-of-way as such owner or
6 owners may elect, upon payment to the claim-
7 ant of an amount the district court in the same
8 action determines to be just compensation for
9 such exclusive possession or control.

10 (B) AGREEMENT.—Before taking any ac-
11 tion pursuant to subparagraph (A), the owner
12 or owners of record shall seek to reach an en-
13 forceable agreement with the claimant that will
14 resolve the concerns that otherwise would be re-
15 solved by such action.

16 (f) RECORDING REQUIREMENTS.—

17 (1) SURVEY AND FILING.—Within 5 years after
18 the date of publication in the Federal Register of a
19 final administrative determination recognizing a
20 valid R.S. 2477 right-of-way affecting lands owned
21 by the United States, the claimant shall file the sur-
22 vey as described in section 4(b)(5) or any other sur-
23 vey that meets the relevant State legal requirements
24 for land recordation with the State office of the Bu-

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

3 (2) FAILURE TO COMPLETE AND FILE SUR-
4 VEY.—The failure of any claimant to complete and
5 file a survey with the Bureau of Land Management
6 within the time period specified in paragraph (1)
7 shall be deemed to constitute a relinquishment of
8 any rights purported to have been acquired under
9 R.S. 2477.

10 (3) JUDICIAL REVIEW.—A deeming of relin-
11 quishment pursuant to this subsection shall be sub-
12 ject to review in the United States District Court for
13 the District of Columbia or the United States Dis-
14 trict Court in the district within which the longest
15 lineal portion of the claimed R.S. 2477 right-of-way
16 lies.

17 (4) STATUTE OF LIMITATIONS.—Any action ini-
18 tiated in district court pursuant to paragraph (3)
19 shall be filed not later than 3 years after the date
20 that recordation was required by paragraph (1).

21 (g) CONSULTATION AND CONCURRENCE.—

22 (1) CONSULTATION WHEN CERTAIN LANDS IN-
23 VOLVED.—With regard to claims any portion of
24 which involve conservation lands, tribal lands, or De-
25 partment of Defense lands, the authorized officer

1 shall consult with each relevant Federal agency or
2 tribe regarding the evidence submitted for a claim
3 and any objections raised regarding the claim's va-
4 lidity.

5 (2) CONCURRENCE REQUIREMENT.—Before
6 making a determination that a claim is presump-
7 tively valid, the authorized officer shall obtain the
8 concurrence of each Federal agency responsible for
9 management of lands affected by the claim.

10 **SEC. 7. RELATION TO OTHER LAW AND PRIOR DETERMINA-**
11 **TIONS.**

12 (a) RELATIONSHIP OF FEDERAL AND STATE LAW.—

13 (1) IN GENERAL.—In making an administrative
14 determination of whether the grant of a right-of-way
15 pursuant to R.S. 2477 over unreserved public lands
16 was validly accepted prior to the latest available
17 date, the authorized officer shall apply Federal law
18 and the law of the State in which the claimed right-
19 of-way is located, and which was in effect on the lat-
20 est available date, to the extent that such State law
21 is consistent with Federal law.

22 (2) RULE OF CONSTRUCTION.—Nothing in this
23 Act shall be construed to limit or expand the appli-
24 cability of State law with respect to any matter re-
25 lating to the scope of a valid right-of-way established

1 pursuant to R.S. 2477, including, but not limited to,
2 the type of road surface, maintenance, liability, and
3 the extent of use.

4 (b) RELATIONSHIP TO FEDERAL LAND POLICY AND
5 MANAGEMENT ACT OF 1976 AND ALASKA NATIONAL IN-
6 TEREST LANDS CONSERVATION ACT.—Nothing in this
7 Act is intended to, or shall be constructed to, affect,
8 change, alter, or modify title V of the Federal Land Policy
9 and Management Act of 1976 (43 U.S.C. 1761 et seq.)
10 or title XI of the Alaska National Interest Lands Con-
11 servation Act (16 U.S.C. 3161 et seq.).

12 (c) RELATIONSHIP TO PRIOR DETERMINATIONS.—

13 (1) STATUS OF PRIORS DETERMINATIONS.—Ex-
14 cept as provided in this subsection, nothing in this
15 Act shall be construed to apply to or affect the sta-
16 tus of any judicial or administrative determinations
17 made prior to the date of enactment of this Act re-
18 garding any claim or assertion based on R.S. 2477.

19 (2) FILING AND RECORDING OF CERTAIN DE-
20 TERMINATIONS.—Any final judicial or administrative
21 determination regarding any claim or assertion
22 based on R.S. 2477 made on or before the date that
23 is 4 years after the date of enactment of this Act
24 shall be filed with the relevant State office of the

1 Bureau of Land Management and recorded on the
2 appropriate land records of the relevant State.

3 (3) EFFECT OF FAILURE TO FILE.—Failure to
4 file or record a determination pursuant to paragraph
5 (2) shall be deemed to constitute a relinquishment of
6 any rights purported to have been acquired under
7 R.S. 2477.

8 (4) REVIEW.—A deeming of relinquishment
9 pursuant to this subsection shall be subject to review
10 in the United States District Court for the District
11 of Columbia or the United States District Court in
12 the district within which the longest lineal portion of
13 the claimed R.S. 2477 right-of-way lies.

14 (5) TIME FOR FILING.—Any action initiated in
15 district court pursuant to paragraph (4) shall be
16 filed not later than 7 years after the date of enact-
17 ment of this Act.

18 **SEC. 8. LIMITATION.**

19 Except with regard to a notice of a claim filed pursu-
20 ant to this Act during the period specified in section 3,
21 no officer, agency, or court of the United States shall take
22 any action to affirm the validity of any assertion that any
23 person or entity other than the United States has a prop-
24 erty interest in a right-of-way pursuant to R.S. 2477.

1 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such sums

3 as may be necessary to implement this Act.

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