

# **RS 2477 and Disclaimer Rule: Environmental, Economic, and Policy Impacts**

## **Overview**

Over 125 years ago, Congress enacted Revised Statute 2477 (RS 2477) with the intent of encouraging and facilitating the development of the nation's mineral resources and westward migration. Surely, that Congress could never have anticipated the number and severity of consequences the simple, 22 word law would wreak. The impacts of RS 2477 are manifold and affect federal, state, and private lands and land owners. The already onerous situation created by the statute is further complicated by the adoption of the Disclaimer of Interest rule by the Bureau of Land Management (BLM) in January of 2003.

## **Land and Resource Impacts**

Probably the most obvious and immediate impact of processing unsubstantiated RS 2477 claims is the direct physical impact on the land and its dependent resources:

Bogus RS 2477 rights-of-way claims in western states could lead to thousands of miles of roads that cross public lands in a spaghetti-like pattern, fragmenting wildlife corridors and habitat. Increased vehicle use in previously remote areas can also disturb wildlife mating and migration patterns.

Fragmentation of public lands and their delicate ecological systems can pave the way, literally, to an increase in invasive plant species that outcompete native vegetation.

An increase in RS 2477 rights-of-way, by promoting the development of roads in remote areas of our nation's treasured public lands, is likely to lead to greater incidents of poaching and looting of archeological artifacts.

Many of the lands through which claimed rights-of-way pass are remote areas which have retained much of their wild character. Such areas may be subject to visible damage in the form of roadways and air and noise pollution as a result of the use of motorized recreational vehicles.

A large number of claimed and potential rights-of-way pass over and run through seasonal stream beds and even year-round waterways. The passage of vehicles through these areas can have serious and permanent impacts on the physical character of the stream and on its ability to support a diversity of aquatic life.

In some states, counties have already begun to bulldoze alleged RS 2477 rights-of-way, causing severe erosion and damage to fragile desert terrain and plant life.

## **Economic Impacts**

Hidden in the application of RS 2477 and the Disclaimer of Interest rule are the financial burdens placed on the federal government, states, and counties and the loss of property value to private land owners. The processing of claims for RS 2477 rights-of-way and applications for recordable disclaimers of interest can be time and labor intensive undertakings. The BLM will be forced to allocate staff and resources to investigate the assertions made by parties seeking to have their claims validated and their petitions granted. Although the BLM regulations provide for both filing fees and administrative processing costs, the \$100.00 application fee is not likely to cover the extensive costs associated with the hiring, training and reassigning of staff to handle large numbers of petitions.

States and counties will also bear increased costs associated with obtaining and maintaining rights-of-way. The San Bernardino County (CA) Department of Public Works submitted comments on the proposed Disclaimer Rule expressing concern regarding "any potential cost recovery" because the "number of claims the county might potentially file could create a financial burden" on the county. Utah counties and the state government have already spent "thousands of hours" identifying, surveying, mapping, researching records, and otherwise seeking to verify the existence of rights-of-way in the state.

Subsequent to a successful application for a right-of-way, states and counties may also incur additional costs. While requirements vary on a state by state basis, states and counties may acquire increased obligations for providing maintenance, signage, and patrol of these roads.

Other agencies within the Department of the Interior (DOI) and the United States Forest Service are also likely to be presented with claims for rights-of-way brought pursuant to RS 2477. Additionally, many public land managers – both federal and state – charge visitors admission and use fees for access to and use of certain areas. Agencies that manage these areas will either lose revenue as visitors use new access points or will need to expend funds to build and staff additional fee collection stations.

Although private lands are not directly subject to the Disclaimer of Interest rule, private land owners will still be adversely affected by the recognition of an RS 2477 right-of-way across their property. Property without an easement is more valuable than the same property once encumbered by a right-of-way. Those who bought a piece of land without the knowledge of a right-of-way will surely experience a diminution in their property value.

## **Management and Policy Implications**

There are many legal questions regarding how the validity of RS 2477 rights-of-ways should be determined. Of particular concern is the sole decision-making authority BLM has in this matter, even when rights-of-way claims cross federal lands that do not fall under BLM jurisdiction. This contradicts the enabling acts for the National Park Service and the National Wildlife Refuge System, both of which authorize respective land managers to make management decisions for the proper use of lands under their jurisdiction.

Processing of bogus RS 2477 claims would force agencies to reconsider existing management plans. For instance, the Grand Canyon National Park General Management Plan directs that most of the primitive roads in the park be closed and restored to a natural state and managed for values such as quiet and solitude. Granting RS 2477 rights-of-way in these areas, and resultant motorized access, would contradict these management guidelines. Land managers would also need to revise their management plans and increase the number of personnel in these areas to account for the increased visitation.

Lands administered by federal and state land management agencies are frequently broken into different administrative zones that are intended to provide visitors to these areas with a variety of different experiences. Some areas are designed to accommodate a greater number of visitors and uses. These areas typically contain the bulk of access roads and visitor and administrative facilities. Other areas are maintained for their wilderness values and remote character and are typified by an absence of infrastructure and activities. The opening of these "backcountry" areas to motorized and other forms of transportation and recreation through additional access points would significantly diminish the opportunities for visitors to experience refuge and solitude that are already scarce commodities in modern society.

Additionally, processing unsubstantiated RS 2477 claims would facilitate new roads through public lands that are currently roadless, thus precluding wilderness designation for lands that would otherwise be eligible.

***For more information, contact:***

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