

## **R.S. 2477 and the 1866 Mining Act**

### **Summary**

Revised Statute 2477, a one-sentence provision of an archaic federal law known as the 1866 Mining Act, is one of the gravest threats facing America's wilderness today. This absurdly outdated statute is currently being used as a loophole by industries and their political allies to gain the right to build unneeded roads—without justification or environmental review—in our national parks, forests, monuments and wilderness lands. Utah counties are asserting up to 10,000 right-of-way claims—including cow paths and stream beds—under this obsolete law. Blanket approval of these bogus claims would spell certain disaster for Utah wilderness by rendering large, pristine areas ineligible for wilderness designation.

### **Robbing the Future with a Ruse from the Past**

Intended by Civil War-era lawmakers to give old-time prospectors easy access to their claims, R.S. 2477 states simply: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." In 1976, Congress passed the Federal Land Policy and Management Act (FLPMA) which repealed R.S. 2477 but continues to honor valid existing rights under a grandfather clause. Secretary of Interior Bruce Babbitt developed regulations in 1994 that would have established balanced, reasonable criteria for determining the validity of right-of-way claims made under this exemption. In 1996, however, the anti-environment 104th Congress passed a law that prohibited those new regulations from taking effect. As a result, local politicians and the mining industry in particular eagerly resurrected R.S. 2477 from its grave as a means of precluding wilderness designation and opening pristine areas to development. In the fall of 1996, Utah county officials even used it as an excuse to carve roads into the newly created Grand Staircase-Escalante National Monument.

### **"Roads" to Nowhere**

Anti-environment state and local government officials argue that these 1866 Mining Act road claims simply provide needed access for transportation in rural areas and access to resources on public lands. In fact, the 1866 Mining Act is not needed to meet these goals. To the contrary, many of the claimed right-of-way routes are cow paths or overgrown jeep tracks that simply fizzle out in the wilderness; they go nowhere. Furthermore, FLPMA already provides for reasonable access to national lands, with public participation and environmental review integral to the decision-making process. Permitting anyone to assert a right-of-way road claim without oversight by land management agencies would take protection of valuable public resources out of the hands of the people and place it in the hands of those who most stand to gain from greed-driven, short term development.

### **A Problem of National Significance**

Legitimizing as many as 10,000 bogus road claims in Utah would set a dangerous precedent for public lands everywhere. Similar potential claims exist in most states and no national environmental treasure is immune. In a Congressionally mandated 1993 report, the Department of Interior told lawmakers that indiscriminate recognition of 1866 Mining Act right-of-way claims could prevent the full protection of important geographic features and biological, cultural and physical resources. Our society has changed dramatically since the 1866 Mining Act became law. It is wrong to go back to the past to justify robbing future generations of our precious natural heritage. We must not allow special interests to turn this Civil War-era law into a loophole large enough to drive a bulldozer through.