

A BRIEF EXPLANATION OF RS 2477

RS 2477 is a statute adopted in 1866 to facilitate the settlement of the West by encouraging the development of a system of roads and trails. The name "RS 2477" is an abbreviation of "Revised Statute 2477." That name, in turn, comes from the placement of the original law in a reorganized version of the U.S. Code.

RS 2477 is a very short law, consisting of only one sentence. It states, in its entirety, that "the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." That right-of-way is a legitimate property right, and, consequently, carries with it a bundle of associated rights, including the right to maintain the roads and upgrade them under certain circumstances.

Once the grant was made, the federal government's interest in the land actually containing the right of way became that of the servient estate. That means that its rights as owner of the underlying land are still protected against undue or unnecessary damage, but it cannot interfere with the owner of the right-of-way exercising its bundle of rights.

These property rights are held on behalf of the public, usually by the counties. In accepting the property right-of-way, the local governmental unit also accepted a legal obligation (and the consequent legal liability) to maintain those rights-of-way to ensure safe passage by the public.

RS 2477 was a self-executing law, meaning that when the requirements of the law were met, the property right was automatically conveyed from the federal government to the county. Indeed, there was never even a requirement that the county inform the federal government when it accepted the grant of a particular right-of-way. The specific actions which local governments took in accepting the grant vary from state to state and have been determined by each state's law.

State law can also determine such things as the width of the right of way.

RS 2477 was repealed in 1976 by a law establishing a more comprehensive resource management framework for the Bureau of Land Management, the Federal Land Management and Policy Act, commonly referred to as "FLPMA." However, FLPMA specifically and clearly stated that all existing RS 2477 rights-of-way were not affected by the repeal of RS 2477 and remained valid. It contained in its Title V a new mechanism for granting rights-of-way from 1976 to the present.

So, while no new grants were made after 1976, all of those made prior to that time were still valid property rights of the counties.

The federal land management agency cannot determine whether the claim is valid or not except for its administrative purposes. Under our Constitution, only the courts can do that. Much of the recent controversy surrounding the RS 2477 issue has been sparked by draft regulations issued by the U.S. Department of Interior which local governments and others claim try to exceed the authority of the Executive Branch under the Constitution as well as suffering from a number of other serious shortcomings as well.

If, based on the documentation the county provides, a federal agency recognizes the validity of a RS 2477 right-of-way claim, then it is bound by the right of the local governmental unit to exercise its bundle of rights. If it does not recognize the validity, then the right-of-way holder can still exercise its right. Where a dispute cannot be resolved, the issue goes to federal court for a decision.

Counties can abandon RS 2477 rights-of-way, but usually must go through formal procedures specified in state law to do so. The lack of maintenance of the road over a right-of-way has no bearing on the continuing validity of the right-of-way. One of the bundle of rights of the local governmental unit is to maintain a safe right-of-way and even to upgrade it within limits.