

Wildlands CPR Policy Primer

Roads to Ruin: Revised Statute 2477 and National Forests

By Laurel Hagen

Editor's Note: this article is meant only as a practical orientation for the layperson, and does not represent the official legal positions of Wildlands CPR or our affiliates. RS 2477 law and policy is very complex and constantly shifting, and it would be impossible to represent the full spectrum of issues here.

In early battles over logging in the Pacific Northwest, timber companies would engage in what they called “park prevention” — targeting potential parklands for clearcutting to disqualify the areas from protection. Now, in Utah, anti-wilderness forces are doing the same thing, but they’re doing it with roads and off-road vehicles. A road, an alleged road, or any significant evidence of the passage of vehicles can be enough to disqualify public lands from a chance at future protection as Wilderness.

The largest threat to our national forests is not currently logging or mining; it is the expansion of playgrounds for the motor vehicle. With the increasing popularity and technological sophistication of off-road vehicles, lands that were once safe from damage merely because of their isolation are now in danger.



Many RS 2477 claims probably represent a bid to win jurisdiction over federal lands, rather than an effort to secure access. Photo by Laurel Hagen.

If you try to stay abreast of the ever-evolving plethora of public lands issues, you’ve probably heard something about RS 2477. The statute is a small part of the 1866 Mining Law, which says, “The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted.” A later public lands law repealed the Mining Law, but grandfathered in any public rights-of-way that existed on Bureau of Land Management land before 1976. However, most national forest lands were “reserved for public uses” (created) between 1896 and 1906. Therefore, most RS 2477 claims on national forest land must have been established before the date of the forest’s creation.

To make this a little more concrete, we’ll take a case in the La Sal Mountains outside Moab. A member of the Grand County Council wrote a letter to the Forest Service (FS), claiming several RS 2477 highways in a roadless area. Though it’s the county’s legal responsibility to present evidence showing that the county owns the claim, the Council member presented no such evidence. Utah counties generally argue that all they need to do is publicly make such a claim, and the roads are “theirs.” The county government, they say, then has all decision-making power over that “road.” Thus, based on a single letter, the Forest Service removed a large part of the roadless area from its maps.

However, the counties’ position differs considerably from FS policy. In response to a 1996 Congressional directive banning federal agencies from making any final regulations pertaining to RS 2477, the FS instituted a moratorium on

validating RS 2477 claims. An RS 2477 claim on national forest land, under this moratorium, cannot be validated by the FS unless there is an “urgent need” to do so. Virtually all claims should be settled in court. Several counties, like Grand County, are making RS 2477 claims as part of the current forest travel planning process underway. However, the FS is supposed to make decisions about roads and recreation based only on regular planning tools (such as public input, field work, and ecological assessments). Unfortunately, many FS offices are unaware of their agency’s policies and regulations. This lack of knowledge makes them more subject to political intimidation from county governments.

Even if a case like Grand County’s were to go to court, proving up an RS 2477 claim can be a heavy lift. A county has to present evidence that a right-of-way existed before the national forest unit that holds the claim was designated. Since many forests, like the Manti-La Sal, were designated at the turn of the century, road construction records, maps, and photographs among other important evidence can be difficult to come by. In reality, RS

Unfortunately, many FS offices are unaware of their agency’s policies and regulations.

2477 is currently tangled in a web of lawsuits at various places in the court system, and no controversial claim is likely to be unequivocally granted until Congress or the courts have a final say.

Congress has been hesitant to resolve the question. The larger issue in RS 2477, of course, has little to do with transportation, and everything to do with history, culture and values. RS 2477 routes rarely link one major destination to another; they’re usually abandoned mine tracks, or cattle trails that meander across the countryside. The real source of all the wrangling is the question of who has control over federal public lands, and whether conservation or resource extraction will win the day. A series of environmental laws were passed in the 1970’s; some put restrictions on federal land for the first time. Some westerners resented federal manage-



User-created routes extend the impacts of soil compaction and facilitate the spread of noxious weeds. Photo by Laurel Hagen.



In their efforts to lay claim to federal lands, some counties have argued that even faint tracks constitute a “road.” Photo by Laurel Hagen.

ment of public lands on which they had long had free rein. Resurrecting RS 2477 has been a strategy for county governments to circumvent decisions made by the federal government, by claiming that the county owns a highway right-of-way in an area the agency wants to protect.

Right now, many county governments in Utah are trying to create large, tangled back-country trail systems for off-road vehicle use. This shortsighted approach has the potential to destroy large portions of Utah’s wildlands, fragmenting habitat, ripping up desert waterways, and marring peace and quiet. With our partners, Wildlands CPR is making sure that all Forest Service offices in Utah have access to good legal information. Making sure that no harmful RS 2477 claims (like the ones in the La Sals) are legitimized as part of the travel planning process is one of our highest priorities.

— Laurel Hagen is Wildlands CPR’s Utah ORV Coordinator.

Around the Office...

It's been a hot, smoky, and extremely busy summer here at Wildlands CPR. We're finally up to full staffing (and then some), with six new folks on board over the last five months (four since June). Our new folks have added incredible knowledge, experience, creativity and depth to Wildlands CPR. In addition, they're not all located in Missoula. We introduced Laurel Hagen, in our new Moab office, in the last issue of the RIPorter, and we're pleased to have begun working with Sue Gunn on a contract basis in Washington state. Her introduction is below, as well as some of the other new things going on here...

Welcome

Sue Gunn is an earth scientist and represents Wildlands CPR in the Washington Watershed Restoration Initiative. Sue worked as an isotope geochemist for over a decade at the U.S. Geological Survey before becoming an environmental advocate when she moved to Washington, DC to work on public lands issues for The Wilderness Society. She served first as their director of Budget and Appropriations and subsequently as the director of their National Park Program. She relocated to Washington State to work for Public Employees for Environmental Responsibility, a watchdog organization that supports local, state and federal whistleblowers. She is now splitting her time between the Center for Environmental Law and Policy and Wildlands CPR. Sue lives in Olympia, WA, and can be contacted by e-mailing sue@wildlandscpr.org.

Check it out

Our new web guru, Josh Hurd, has been tapping his fingers to the bone creating our new website. The new site is incredible, so take some time to cruise around. Josh organized our resources into a simple, searchable database. You can find economics reports, literature reviews, policy primers and also links to reports from other organizations that are excellent resources on our issues. Just go to the resources page of our website, highlight the type of resource you're looking for and see what comes up! You'll also see big changes on the home page, where Josh



Photo by Dan Funsch.

has created a simple hotlink section to current news stories, as well as a new blog, where you can, for example, link to the latest You Tube "wreck-creation" videos of ATVers ripping through meadows and streams, as well as lots of other current events.

Josh also worked closely with our Communications Coordinator Jason Kiely to set up our new electronic e-newsletter, replacing Skid Marks. The e-newsletter includes just one or two sentences from each article, with a link to the full story on our website. It's a great collection of feature stories, news, highlights from current events in restoration and transportation planning, and more. It's more interactive and in-depth than Skid Marks, so we hope you'll enjoy it. Most of what was covered in Skid Marks will now be covered on our specific issue pages — just click on, for example, "ORVs in the News."

Annual Gifts Campaign

As regular readers of our newsletter, most of you know that our annual gifts campaign occurs every fall, and it's that time of year. Please consider increasing your donation this year, to ensure that Wildlands CPR stays at the leading edge of restoration and transportation work. If you've already sent in a donation — THANK YOU!

Thanks

We'd like to thank the Foundation for Deep Ecology, the Yellowstone to Yukon Conservation Initiative, the Norcross Wildlife Foundation, and the Lazar Foundation for generous grants to support both our restoration and transportation policy work!

Join Wildlands CPR Today!

We've made joining Wildlands CPR easier — *and more effective* — than ever before.
Please consider making a monthly pledge!

Consider the advantages of our Monthly Giving Program

• Reducing Overhead

Monthly giving puts your contribution directly into action and reduces our administrative costs. The savings go to restoring wildlands and building a more effective network.

• Making Your Gift Easier

Say goodbye to renewal letters! Your credit card or bank statement will contain a record of each gift; we will also send a year-end tax receipt for your records.

• Our Promise To You

You maintain complete control over your donation. To change or cancel your gift at any time, just write or give us a call.

Name _____

Street _____

City, State, Zip _____

Phone _____

Email _____

Type of Membership: ☐ Individual/Family ☐ Organization ☐ Business

Organization/Business Name (if applicable) _____

Payment Option #1: Credit Card Pledge

☐ \$10/Month (minimum) ☐ \$20/Month ☐ other _____

Charge my: ___ Visa ___ MasterCard ___ American Express

Credit Card Number: _____

CSC Number: _____ *(see below)

Expiration date: _____

Signature: _____

* The Card Security Code (CSC) is usually a 3 - or 4 - digit number, which is not part of the credit card number. The CSC is typically printed on the back of a credit card (usually in the signature field).

Payment Option #2: Electronic Funds Transfer from Checking Account

☐ \$5/Month ☐ \$10/Month ☐ \$20/Month ☐ other _____

I/we authorize Wildlands CPR to deduct the amount indicated above from my checking account once per month.

Signature _____

Please include a voided check. All information will be kept confidential. Transfers will be processed on the first Friday of each month, or the following business day should that Friday be a bank holiday.

NOTE: If you would prefer to make an annual membership donation (\$30 standard membership, or more), please visit our website (www.wildlandscpr.org) or send your check to the address below.

Please send this form and your payment option to:
Wildlands CPR • P.O. Box 7516 • Missoula, Montana 59807

Thank you for your support!

Visions



Cedar grove in Ward Creek, Montana. Photo by Dan Funsch.

Wildlands CPR
reviving wild places
P.O. Box 7516 • Missoula, MT 59807 • wildlandscpr.org

Non-profit Organization
US POSTAGE
PAID
MISSOULA MT, 59801
PERMIT NO. 569

*The threat of a road into the heart of
wilderness may seem unrealistic to
some, but wild places will exist only so
long as free people work to protect them.*

*Scott Stouder, Keeping the Hunt Wild,
A Road Runs Through It.*

The Road-RIPorter is printed on 100% post-consumer recycled, process chlorine-free bleached paper with soy-based ink.