

Colorado Springs Gazette
Letters to the Editor
July 1, 2007

IN RESPONSE

Legislation needed to clarify historic rights-of-way

The Gazette's June 24 Our View, "Udall takes the wrong fork in the road," about my efforts to resolve historic claims of rights-of-way (so-called RS 2477 claims) on public and private lands was inaccurate in several respects.

The issue is not access, but ownership – whether a claimant has a property right in the affected lands and whether those lands are public or private.

The editorial suggested that if someone claims even a cowpath or trail as an RS 2477 road open for public use, that claim is automatically valid. But that's the very issue – whether a purported right-of-way really is one. The RS 2477 law was a grant of rights-of-way for "construction" of "highways."

A recent 10th Circuit Court of Appeals decision held that means a claimant must prove a "grant" was accepted (usually by a county or the state) and that the "construction," "highway," "use" and other requirements were met prior to the law's repeal in 1976.

So it's just not accurate to say that "Congress has twice recognized the counties' rights to these roads." Instead, when it repealed RS 2477, Congress provided that valid existing rights would not be affected, but, unfortunately, it did not provide any process to establish which were valid, much less indicate that counties had rights to any specific claims.

When Bruce Babbitt was secretary of the interior, the Clinton administration tried to establish administrative procedures for handling these claims. Congress blocked that effort by banning any final regulations on the subject without new legislation.

The Bush administration has never sought such legislation, even while the Republicans controlled Congress. Instead, it wants to evade the prohibition by administrative procedures it says are not RS 2477 regulations. I believe Congress should block that attempted end run, but only as a necessary first step toward revolving the issue through legislation.

One thing is certain – if the administration proceeds, the result will be more lawsuits. We can either go through litigation one-by-one to see if a claim meets legal requirements, or, as I have suggested, Congress can establish a cost-effective, neutral, fair and expedited process to resolve them once and for all. The latter option steers a careful course and respects all points of view.

I disagree with the loaded assertion that I "care little about the rights of Westerners" on this issue. That might be true if I sought to take away established rights-of-ways. That is not the case. I seek a balanced and workable resolution that will provide certainty to local

governments where RS 2477 roads were legally established and will protect private property owners against invalid claims affecting their lands.

I believe it is in the best interest of counties, private property owners and off-road vehicle users to know what claimed rights of way are legitimate and which are not. Otherwise, there will always be fights over what roads exist and who has a right to use them.

U.S. Rep. Mark Udall
District 2
Westminster