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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0602**

August 6, 2003

The Honorable Don Davis  
 Commission Chair  
 Rio Blanco County  
 PO Box 1  
 Meeker, CO 81641

Dear Commissioner Davis:

I understand my bill (H.R. 1639) concerning claims based on RS 2477 was discussed during debate in the CCI Public Lands Steering Committee on a proposed letter on that subject to the Executive Director of the Colorado Department of Natural Resources.

As you know, I had hoped that CCI would have taken the time to more fully review that bill and my reasons for thinking a legislative approach would be better than an administrative arrangement between the current State and Federal Administrations.

Based on reports of the Committee's debate, I think there are serious misunderstandings about the bill and why I introduced it. So, I want to provide some clarification and to renew my request that CCI seriously consider a legislative approach to this issue.

First, I understand that comments were made that my bill would not allow for public comment on the issues related to RS 2477 claims. That is not the case. For one thing, I have already asked the Chairman of the Resources Committee to schedule a hearing on the bill, so that the committee can hear from the Bush Administration and other interested parties such as CCI members and the public.

In addition, the bill itself allows for a very public and open process to considering RS 2477 claims. Under section 4(d) of the bill, after receiving a timely claim for a right-of-way, the reviewing officer "shall consult with the appropriate Federal Agencies, as well as States and Tribal governments (and in the case of Alaska, Native Corporations...) that own or control lands affected by the claimed R.S. 2477 right-of-way." The same part of the bill specifies that in reviewing a claim from someone other than a State or political subdivision, the officer "shall consult with each State and political subdivision thereof within which lands affected by the claim are located." In addition, section 4(e) provides that after review of relevant information and after consultation under subsection (d) the officer "shall prepare a draft administrative determination regarding the claim" that will be made available for public comment for a minimum of 60 days.

Second, I understand it was asserted that my bill is unconstitutional. I take very seriously my oath to uphold the Constitution, and if I thought that was true I would not have introduced the bill.

Section 3 (c) of the bill would establish a deadline of four years after enactment for asserting claims for rights based on RS 2477, and says failure to meet that deadline "shall be deemed to constitute an



abandonment" of such rights. It also provides for judicial review of any finding based on this provision. This is the same approach Congress took in section 314 of the Federal Land Policy and Management Act of 1976 ("FLPMA") which set a three-year deadline for owners of unpatented mining claims to record their claims and provided that failure to meet that deadline "shall be deemed conclusively to constitute an abandonment" of unrecorded claims. The Supreme Court, in its 1985 decision in *United States v. Locke* (105 S. Ct 1785), upheld the constitutionality of that part of FLPMA, and I am confident that my bill is also constitutional.

Third, I understand that my staff was asked if we had contacted officials with the National Association of Counties (NACO). That in fact has been done. The national NACO office was provided with a copy of the bill shortly after its introduction, and my staff discussed it briefly with NACO staff at that time. I would have been glad to provide similar (or any other) information if CCI had asked for it at any time between the bill's introduction in April and the August 1<sup>st</sup> debate in the Public Lands Committee.

Fourth, I understand that it was asserted that my bill is not consistent with relevant Colorado law. I think such a statement is based on a misunderstanding of the bill's purpose and contents. The bill deals with the process to be followed by the federal government in considering assertions based on RS 2477. Section 5(a) specifically provides "In making an administrative determination of whether the grant of a right-of-way pursuant to R.S. 2477 ... was validly accepted ... and in determining the scope of any right-of-way so validly accepted, the authorized officer shall apply Federal law and the law of the State in which the claimed right-of-way is located ... to the extent that such State law is consistent with Federal law." In short, the bill recognizes that the laws of Colorado and other affected States must be given appropriate consideration in connection with assertions of rights based on RS 2477, which of course was a federal law.

Fifth, I understand that some Committee members felt that the bill's four-year deadline is too short. I recognize that's something on which opinions can vary -- but it seems to me that an additional four years is very reasonable, especially when you consider that RS2477 was repealed in 1976, that the House of Representatives as long ago as 1991 passed a bill (H.R. 1096 of the 102<sup>nd</sup> Congress) to set a deadline for RS2477 claims, and that a formal Administration proposal for a legislated deadline was submitted in 1997. In view of that history, it seems to me that those claiming to have rights based on RS 2477 should be prepared to assert their rights within another four years.

As you know, a bill's introduction is only the start of the legislative process. I am interested in hearing from NACO, CCI, and anyone else with an interest my bill, and I would welcome the opportunity to talk with CCI members about it. I think we all agree that issues related to RS 2477 are important and need to be resolved in a way that takes into account the interests of all concerned, in Colorado and the rest of the nation.

Sincerely,

Mark Udall  
Member of Congress

Comments -  
I'd like to solve  
this problem -  
Thank you for  
taking time to  
review -

MEU:cb