

APPENDIX III

R.S. 2477 SCOPING PROCESS

Exhibit

A . . . . . R.S. 2477 Scoping Process and Issue Summary

## Scoping Process and Issue Summary

### Introduction

This appendix summarizes the comments received during the information-gathering or "scoping" phase of the Department of Interior's Congressionally-directed study of R.S. 2477 rights-of-way. The information received is appreciated and has greatly assisted in the preparation of this draft report.

### Purpose

The purpose of scoping in for this report was to gather views, comments, and information regarding the history of R.S. 2477 and current and future management of these rights-of-way. The specific topics of study directed by Congress to the Interior Department included:

- the history of rights-of-way claims under section 2477 of the Revised Statutes
- the likely impacts of current and potential claims of such rights-of-way:
  - on the management of Federal lands,
  - on the access to Federal lands, private lands, State lands, Indian and Native lands,
  - on multiple use activities.
- the current status of claims
- alternatives to assessing the validity of claims for rights-of-way
- alternatives for obtaining rights-of-way

In order to respond to Congressional direction within the short time provided for this study, affected interests were asked to provide information relating to these areas as well as any other feedback they wished to express to the task force preparing the report. The deadline for submitting information to the task force was originally January 4, 1992. That date was subsequently moved back to January 14, 1993, in response numerous requests for a comment period extension.

### The BLM Study Process

To address this important public land issue in a manner that responds to Congressional direction, the BLM assembled a study task force comprised of representative(s) from each BLM State organization, the BLM Headquarters Office, and affected Federal land management agencies. Non-BLM participating offices include the National Park Service Rocky Mountain Region in Denver, Colorado, Bureau of Indian Affairs Washington Office, United States Fish and Wildlife Service Washington Office, and the United States Forest Service Region 4 Office located in Ogden, Utah.

The active involvement of affected interests from the Western Public Land States has been an essential element of this study. On November 18, 1992, several hundred letters and "scoping" packages were mailed to State and local governments, land-use organizations, and other affected interests. Notification of the study was published in the December 15, 1993 *Federal Register*. News releases were distributed to national, regional, and Statewide media outlets announcing the initiation of the study and requesting information from the public.

In addition, several public meetings were held to gain input. Meetings dates and locations included:

- \* Salt Lake City, Utah            November 14 and 15, 1992
- \* Fairbanks, Alaska            December 15, 1992
- \* Anchorage, Alaska            December 17, 1992
- \* Boise, Idaho                    December 22, 1992
- \* Billings, Montana            January 5, 1993
- \* Riverside, California        January 5, 1993
- \* Reno, Nevada                 January 7, 1993
- \* LeGrande, Oregon            January 12, 1993

Throughout this scoping process, numerous additional contacts were made, through the members of the study task force, with affected interests. To date, 2,345 individuals and organizations have responded to the task force indicating a desire to participate in the study process.

### **Scoping Information**

Complete copies of all the information submitted to the task force has been reproduced and sent to each BLM State Office and a designated office from each of the other Federal agencies participating in this project. In addition to scoping letters and support documentation received, these files contain appropriate State statutes, citations to court cases, past administrative guidance, and other materials. These files are available for review at the offices listed below. For additional information, please contact the representative listed under each office location.

## BLM Office Locations

### Alaska

Alaska State Office  
222 West 7th Avenue, #13  
Anchorage AK 99513-759  
Sue Wolf (907) 271-3293

### Arizona

Arizona State Office  
3707 North 7th Street  
P.O. Box 16563  
Phoenix AZ 85011-6563  
Bob Archibald (602) 640-5509

### California

California State Office  
Federal Building  
2800 Cottage Way, E-2841  
Sacramento CA 95825-1889  
Dave MacInay (916) 978-4730

### Colorado

Colorado State Office  
2850 Youngfield Street  
Lakewood CO 80215-7076  
Herb Olsen (303) 239-3709

### Eastern States

Eastern States Office  
350 South Pickett Street  
Alexandria VA 22304  
Ed Ruda (703) 440-1685

### Idaho

Idaho State Office  
3380 Americana Terrace  
Boise ID 83706  
Bill Wiegand (208) 384-3127

### Montana

Montana State Office  
Granite Tower, 222 North 32nd Street  
P.O. Box 36800  
Billings MT 59107-6800  
Jim Binando (406) 255-2935

### Nevada

Nevada State Office  
850 Harvard Way  
P.O. Box 12000  
Reno NV 89520-0006  
Ken Stowers (702) 785-6478

### New Mexico

New Mexico State Office  
P.O. Box 27115  
Santa Fe NM 87502-7115  
Teodoro Rael (505) 438-7419

### Oregon

Oregon State Office  
1300 N.E. 44th Avenue  
P.O. Box 2965  
Portland OR 97208-2965  
Bob Mollahan (503) 280-7158

### Utah

Utah State Office  
P.O. Box 45255  
Salt Lake City UT 84145-0155  
Ted Stephenson (901) 539-4100

### Washington DC

Bureau of Land Management (1620 LS)  
1849 C Street, NW  
Washington DC 20240-9998  
Ron Montagna (202) 653-9202

### Wyoming

Wyoming State Office  
2515 Warren Avenue  
P.O. Box 1828  
Cheyenne WY 82003  
Mel Schlagel (307) 775-6115

### Other Federal Agency Office Locations

Bureau of Indian Affairs, Tech Services  
849 C Street , 4522 MIB  
Washington DC 20240  
Alice Harwood

U.S. Forest Service  
324 25th Street  
Ogden UT 84401  
Sue Bybee

US. Forest Service  
14th and Independence St. SW  
P.O. Box 9690  
Washington DC 20090  
Gordon Small

U.S. Fish and Wildlife Service  
1849 C Street NW, MS-670-ARLSQ  
Washington DC 20240  
Donald Voros

National Park Service, Rocky Mtn. Region  
12795 West Alameda Parkway  
Lakewood CO 08227  
Dick Young, Land Resources

### **Scoping Comment Summary**

As stated previously, this appendix summarizes comments received during the scoping effort. The purpose of this section is to consolidate comments into the issue(s) addressing each category of information requested from Congress. Comments have been consolidated into the headings listed below:

- History of R.S. 2477 Rights-of-way
- Current Status of Claims
- Impacts of Current and Potential Claims on Access To Federal lands, State lands Indian and Native lands, private lands.
- Impacts of Current and Potential Claims on the Management of Federal Lands
- Impacts of Current and Potential Claims on Multiple Use Activities
  - Mining and Other Commercial Uses
  - Motorized Recreation Opportunities
- Impact of Current and Potential Claims on State and Local Governments
- Impacts of Current and Potential Claims on Alaskan Native Lands
- Alternatives To Obtaining Rights-of-way
- Alternatives To The Current Validation Process

1. History of R.S. 2477 Rights-of-Way

Congressional intent was the key issue raised. What did Congress grant and to whom? And, if a grant was established, to what extent were rights conveyed? How and when should these rights be applied? What jurisdictional entity governs these rights?

Numerous interpretations of the Statute were offered to answer these and other questions. Most discussion, however, can be grouped into one of two general categories.

The Congressional grant and the correct application of the law is very broad. For example:

"R.S. 2477 was a blanket authority granting the right to local government to build access across the public domain for purposes of public conveyance and convenience. The right granted to local government was not limited to specific tracts or specific dimensions or specific modes of access. Access ways could be "built" where needed in a manner as needed and modified as needed under the blanket R.S. 2477 right. The right was total and without reservation."

R.S. 2477 should be interpreted in much narrower terms with specific limitations to the establishment and application of rights. For example:

". . . the historical purpose and intent was to allow miners and homesteaders access across federal lands in order to relieve a situation of mass trespass."

and (paraphrasing) the right is not prospective in establishment of a right-of-way or in the application of an existing R.S. 2477 highway

Similar positions were presented regarding many of the key elements of the Statute. Various definitions of the statutory elements of the law were given; including what constitutes a "highway," "construction," and "reserved public lands."

Other key issues raised, include questions regarding the governing law (State or Federal), the role of FLMPA and the Alaska National Interest Lands and Conservation Act (ANILCA), and positions regarding the "scope" of rights conveyed. For example:

FLMPA does not govern interpretation of R.S. 2477, nor can any later Congressional enactment do so:"

"The BLM is violating the intent of both statutes by granting R.S. 2477's pro forma and by limiting the Secretary's ability to retain and manage the public lands for multiple use and sustained yield . . . ."

*Key Issues*

- There are several relevant interpretations regarding the intent and application of the Statute.

- The Department of Interior should clarify what its position has been on this issue historically.

## 2. Current Status of Claims

Some information pertaining to past R.S. 2477 determinations, such as serialized case numbers or other documentation found on the public land record, was received from participating agencies and, in some cases, the public. While it is intuitively known that many of the Interstate/State highways, county thoroughfares, and other roads in the West were granted under the authority of R.S. 2477, little documentation is apparent.

Likewise, very little "hard" or quantifiable information was received on potential R.S. 2477 roads likely to be claimed in the future. Most speculated only in very broad terms. The number being either very great, moderate, or very few. These relative values depend upon how the Statute is interpreted, applied, and most likely adjudicated in the courts, in the future.

The following comments exemplify the range of viewpoints expressed as to the existence of R.S. 2477 rights-of-way on the public and private lands.

"There are hundreds of major and perhaps thousands of minor R.S. 2477 rights-of-way in Alaska. They exist under law whether they have been "asserted" or not. They exist whether or they have been recognized by the Federal Government or the State of Alaska. They will continue to exist until they are "vacated" in accordance with State law."

"In Nevada alone there are undoubtedly thousands of vehicle tracks going back to 1866 which are still traceable in this arid and fragile land. To maintain that these are constructed roads is ridiculous."

Other comments under this category refer to the existing Departmental R.S. 2477 policy. Numerous comments, both pro and con, were received.

### *Key Issues*

- Lack of inventory, confusion over the law and its application make it difficult to inventory, thus asses impacts of potential R.S. 2477 claims.
- State and local governments view R.S. 2477 rights-of-way as property assets. Loss or reduction of use may constitute a "taking" necessitating compensation.

## 3. Impacts of Current and Potential Claims On Access To Federal Lands, State Lands, Indian and Native lands, and private lands.

Many comments stressed that R.S. 2477 was essential because it maximized access options and that no actions should be taken to change this.

"Any road that was in place before that date (FLPMA) should be left alone and not closed

to the public."

Several comments stated that Alaska, for a variety of reasons, posed a special situation, and that R.S. 2477 access is particularly critical to that State. Contributing factors include the State's large Federal land base coupled with the fact that much of the private, State, and local property has recently been established from Federal lands with underlying preexisting R.S. 2477 rights-of-way. This unique situation makes R.S. 2477 rights-of-way particularly important for access and travel in all types of land in Alaska.

"Because Alaska is a young and sparsely populated state and is only now experiencing the kinds of growth and development pressure most states experienced long ago, Alaska's access rights, of which R.S. 2477 is a key element, must be protected."

Other comments voiced that R.S. 2477 might expand vehicular access opportunities to lands currently closed to due to Federal wilderness legislation or regulatory actions such as off-road vehicle closures.

"Appropriate processes need to be developed to acknowledge R.S. 2477 roads, paths, and ways inside of wilderness areas and wilderness study areas."

Others noted that denial of an R.S. 2477 right-of-way does not eliminate access. Access would remain open under Federal jurisdiction.

". . . It merely leaves the access under the management and jurisdiction of the BLM or other federal administrator. This is precisely what Congress intended in the passage of FLPMA."

Similar to the above point, many comments identified that existing regulations pertaining to several multiple-use activities contain access provisions (i.e., 3809 mining regulations) precluding the need for other authorizations such as a FLMPA or an R.S. 2477 rights-of-way.

Several key issues were raised concerning the present or potential effect of R.S. 2477 rights-of-way on access to, or through, private lands.

R.S. 2477 facilitates access to private lands. This is particularly important in the West where land-ownership patterns are often checkerboarded or large areas of public lands surround private inholdings.

Maintaining R.S. 2477 rights-of-way across private lands ensures future access of the public to public lands; and,

Federal, State, or private individuals should reestablish R.S. 2477 rights-of-way on roads currently blocked by private land owners in order to gain access to public lands.

#### *Key Issues*

- Assessment of potential impacts is difficult due to lack of information available.
- Alaska may present a unique situation.



- R.S. 2477 maximizes access options.
- R.S. 2477 may present an opportunity to gain access to areas currently closed, ~~both public~~ and private lands.
- Denial of R.S. 2477 does not eliminate access, it merely leaves access under jurisdiction of Federal land manager.

#### 4. Impacts Of Current and Potential Claims On The Management of Federal Lands

Pending and other potential R.S. 2477 claims pose a serious risk to Alaska and other Western National Parks. They potentially threaten the values and purposes for which park lands have been established. They may also impair the National Park Service's ability to manage the parks under the Organic Act mandate.

Similar concerns were voiced regarding Federally designated wildlife refuges, preserves, conservation units, and other areas. For example:

"Congress certainly did not designate national parks, refuges, and forests in Alaska to protect wilderness and wildlife values with the notion that an ancient claim could be upgraded, reconstructed/or converted to uses that are incompatible with the conservation purposes established in law."

Other comments focused on development and maintenance of a rural road system due to R.S. 2477 and the benefits that system provides to Federal land managers.

"It should be recognized by federal land managers that their activities on the land are made possible largely because counties have exercised their rights pursuant to R.S. 2477. An extensive network of roads has been built and maintained at the expense of local government and local taxpayers and to the benefit of the non-taxpaying federal agency managing the land."

Other comments stated that the proliferation of R.S. 2477 rights-of-way across the public land threatens resources and impairs the Federal manager's ability to carry out management plans or legal obligations in accordance with environmental protection legislation.

"The fact is public lands can not be managed by the BLM, as Congress intends, when the lands are covered with a "spaghetti plate" of rights-of-way."

Wilderness was a special concern of many comments.

Confirmation of past R.S. 2477s and the large number of potential assertions, if deemed valid, would degrade or disqualify areas of public lands proposed for wilderness designation by members of the public.

Pending and potential R.S. 2477 assertions within wilderness and WSAs threaten to degrade or

disqualify areas currently designated or under consideration for wilderness status.

... Millard County in western Utah has given BLM notice that it intends to file suit against the agency to quiet title to an R.S. 2477 that is asserted within a Wilderness Study Area. The implications of this action must also be discussed."

Other comments stated that R.S. 2477 presents a good way of preventing areas that are not truly roadless from qualifying as wilderness.

"... road closures are done to further enhance or expand (artificially) wilderness boundaries. R.S. 2477 may be our only hope in keeping this from happening any further."

#### *Key Issues*

- Current and potential R.S. 2477 roads disrupt management of Federal lands and threaten resources and public purposes and values of public lands.
- Confirmation of pending or potential R.S. 2477 assertions would degrade or disqualify areas of public lands designated or proposed for designation as wilderness areas.

#### 5. Impacts Of Current and Potential R.S. 2477 Claims On Multiple Use Activities--Mining and Other Commercial Uses

R.S. 2477 is essential to the mineral industry because it helps to maximize access options for exploration and development. For example:

"The mineral industry depends on unimpeded access to remote areas of the public domain. Any attempt to restrict the scope of valid existing rights established under R.S. 2477 will directly hamper mineral exploration and development which is absolutely vital to this country's economy and national security."

R.S. 2477 rights-of-way have a minimal effect upon the mineral industry due to availability of access under casual use, "built-in" provisions for access under mining law, and the availability FLPMA, ANILCA, and other rights-of-way provisions which provide reasonable, alternative means of access.

#### *Key Issues*

- R.S. 2477 rights-of-way are essential to mining and other commercial purposes on public lands
  - Casual-use and alternative rights-of-ways are adequate and more appropriate considering contemporary management of public lands
6. Impacts Of Current and Potential Claims On Multiple Use Activities--Motorized Recreation Opportunities

R.S. 2477 rights-of-way are important because they maximize access options and help to maintain "traditional" access.

R.S. 2477 may enhance motorized recreation opportunities by offering the opportunity to regain vehicular access to areas currently closed. For example:

"...highways closed subsequent to the passage of FLPMA which meet R.S. 2477 should be open."

*Key Issue*

- R.S. 2477 enhances motorized recreational access by maintaining access and providing the opportunity to reopen roads currently closed.

7. Impacts Of Current and Potential Claims On State and Local Governments

R.S. 2477 rights-of-way provide State and local governments greater flexibility in administering lands within their jurisdictions. It also gives them greater control over access and the uses of neighboring public and private lands deemed vital to the interests and stability of local economies and culture. To repeal or limit the R.S. 2477 statute would cause undue hardship on local government and rural communities.

*Key Issues*

- R.S. 2477 has provided State and local governments greater flexibility in administering lands within their jurisdictions and has provided access to neighboring public and private lands.

8. Impacts of Current and Potential Claims To Alaskan Native Lands

Several Alaska Native organizations identified problems regarding the possibility of further R.S. 2477 claims across their lands. Many comments characterized assertions as trespass, impacting Native land and resources, and in some situations potentially threatening to traditional subsistence pursuits. For example:

"R.S. 2477 right-of-ways within Native conveyed lands have the serious potential to undermine one of the Alaska Native Claims Settlement Act-to allow the Native people of Alaska to maintain their own land and resources."

*Key Issues*

- R.S. 2477 right-of-way regarded as trespass, impact Native land and resources and may undermine self-determination of Native Alaskans.

9. Alternatives Methods of Obtaining Rights-of-way

Right-of-way provisions contained within Title V of FLPMA and Title XI of ANCLIC are adequate for future needs and more properly allow for the selection and determination of travel corridors within the framework of contemporary laws including NEPA.

Others express that Title V and especially Title XI are inadequate, and that neither meets the needs nor gives the flexibility and latitude to local governments that R.S. 2477 provides.

Some comments expressed problems associated with cost, time delays, and diminishment of rights when commenting on the conversion of R.S. 2477 rights-of-way to either FLPMA or ANCLIC rights-of-way.

Right-of-way provisions in FLPMA and ANCLIC do not govern preexisting rights of R.S. 2477

#### *Key Issues*

- Right-of-way provisions contained in FLPMA and ANCLIC are adequate for future needs and within the framework of contemporary law.
- FLPMA and ANCLIC are inadequate and do not provide the flexibility that R.S. 2477 provides.
- Neither FLPMA or ANCLIC govern the preexisting rights of R.S.2477.

#### 10. Alternatives To the Current Validation Process

Several different alternatives to the validation process currently in use were identified:

Adopt the process outlined in House of Representative Bill 1096 introduced during the 102 session of Congress.

DOI should establish separate regulations dealing with R.S. 2477 that should preclude BLM from acting in an adjudicatory capacity and include; no review by IBLA, provide for direct recourse to Federal Courts, no automatic stay, no standing for third parties.

DOI should engage in rulemaking to establish a confirmation process whereby all individuals and State and local governments with unresolved R.S. 2477 claims would be required to submit proof of the validity of their claims to the Department for confirmation. Public notice would be given of all asserted claims and the public would have an opportunity to comment and appeal any confirmation of the grant.

The current DOI policy and supplemental procedures used by Utah BLM should be adopted with certain operational refinements to add precision, clarity, and efficiency to the process.

The DOI should combine procedures currently in use by the State of Alaska and the BLM into a single process to yield a uniform program benefiting DOI, the State of Alaska, private land owners, and the public.

No policy is needed.

*Key Issues*

- New policy significantly different from current policy is needed.
- The existing policy is adequate with operational changes to improve efficiency.
- A consistent, uniform confirmation process by combining features currently in use by the State of Alaska and BLM would produce a good program benefitting all.

APPENDIX IV

EMERY COUNTY CONSENT DECREE

Exhibit

A . . . . . Consent Decree, U.S. v. Emery County, Utah, Civil  
No. 92-c-106s (D. Utah, filed December 15, 1992)

RECEIVED CLFRK

DAVID J. JORDAN, United States Attorney (#10551)  
JOSEPH W. ANDERSON, Assistant United States Attorney (#10551)  
DANIEL D. PRICE, Assistant United States Attorney (#2646)  
Attorneys for the United States of America  
476 United States Courthouse  
350 South Main Street  
Salt Lake City, Utah 84101  
Telephone: (801) 524-5682

RECEIVED  
FILED IN UNITED STATES DISTRICT COURT DISTRICT OF UTAH  
DEC 15 1992  
MARKUS S. ZIMMER, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

EMERY COUNTY, a political  
subdivision of the State of  
Utah,

Defendant.

Civil No. \_\_\_\_\_  
92-C-1069S  
CONSENT DECREE

The Parties, Emery County (the County), a subdivision of the State of Utah, and the Bureau of Land Management (BLM), an agency of the U.S. Department of the Interior, hereby agree as follows:

1. Emery County does not admit any facts alleged in the Complaint which are not specifically stated in this Consent Decree and as such, Emery County's agreement to this Consent Decree should not be deemed an admission of any allegation contained in the Complaint.

2. Highways exist in Emery County which have in the past been, or may in the future be, administratively recognized by the BLM as R.S. 2477 highways across public lands, including the Buckhorn Wash Road which the BLM administratively recognized as an R.S. 2477 highway on May 1, 1991.

3. The law in Utah, as established by the U.S. Tenth Circuit Court of Appeals in Sierra Club v. Hodel, 848 F.2d 1068, 1083 (10th Cir. 1988); Sierra Club v. Lujan, 949 F.2d 362, 369 (10th Cir. 1992), is that the extent of an R.S. 2477 highway over public lands in Utah is not necessarily restricted to the width and extent of the disturbance on the date of its acceptance as a public highway, or the repeal of R.S. 2477 on October 21, 1976; but is what is reasonable and necessary for the type of use to which the road has been put and should not be restricted to the actual beaten path, but should be wide enough to allow travelers to pass each other. Hodel at 1083. The determination of what is reasonable and necessary shall be made by the BLM.

4. Congress has provided in Section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(b), that, "In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent any unnecessary or undue degradation of the lands." The BLM acts on behalf of the Secretary of the Interior to perform this responsibility.

5. Insofar as the County is performing routine maintenance within the previously disturbed area and on existing associated



structures on a road which has been administratively recognized by the BLM as an R.S. 2477 highway, the county is not required to notify the BLM of the work.

6. If, however, the County proposes any work outside the previously disturbed area and existing associated structures or initiates any improvements (improvements include, but are not limited to, widening the existing road and do not specifically include adding gravel surface), the County will notify the BLM Authorized Officer in writing at least sixty (60) working days before the County begins any work so that both the County and the BLM may be satisfied that the proposed work on the R.S. 2477 highway is reasonable and necessary and that no unnecessary or undue degradation to the public lands would occur thereby. The County will also share its plans with the BLM Authorized Officer and arrange to visit jointly the proposed work areas to assure that both the County and Federal rights are protected and responsibilities are met prior to the start of any work. The County may not proceed with work until the BLM Authorized Officer determines in writing that there will be no unnecessary or undue degradation to the public lands as a result of the proposed work. Such written determination will not be unreasonably withheld, and the BLM shall respond to the County within thirty (30) days of receiving notification. After approval and at least five (5) working days before beginning work, the County will notify the BLM in writing of the date and time work will begin.

7. If a dispute arises between the parties concerning their rights and duties on a recognized R.S. 2477 highway, the dispute shall be resolved by prior consultation and, to the extent possible, negotiations with the other party. If, after consultation or negotiations, the parties are not in agreement concerning the rights and duties of either party, the unresolved issues must be submitted to a court of competent jurisdiction.

8. If the County proposes to realign an R.S. 2477 road, to comply with applicable safety standards or for any other reason, through a non-adjointing deviation from the existing disturbed area of the R.S. 2477 right-of-way, or if the BLM mandates a less degrading alternative which is a reasonable substitute for the County's proposal, the County will apply to the BLM for a permit to do so. However, the granting of such permit shall not unreasonably be denied by the BLM nor be burdened by unreasonable conditions. The County shall not be required to accept the right-of-way permit issued by the BLM in place of its R.S. 2477 grant and such acceptance by the County shall not constitute an abandonment or waiver of its R.S. 2477 right-of-way.

9. At least five (5) working days before any on-the-ground work pursuant to a BLM permit as described in paragraph 8 is begun on an R.S. 2477 road, the County will notify the BLM Authorized Officer in writing so that representatives of the BLM can (i) participate in a pre-construction conference, and (ii) schedule appropriate BLM monitoring of the work, so that the BLM can prevent any deviations by the County or its contractor from

the plans which have been reviewed and approved by the BLM Authorized Officer, and prevent potential violations of any applicable laws, which the BLM is required to enforce in order to protect the public lands and their resources.

10. The procedures outlined above for construction projects on R.S. 2477 roads in Emery County, as administratively determined by the BLM, shall be amended consistent with any and all policies and procedures which may be promulgated by a special task force comprised to include representatives of the BLM, the Utah Association of Counties, and the State of Utah, and subsequently adopted by the BLM.

11. This consent decree fully resolves the issues raised in plaintiff's prayer for relief, as set forth in the complaint filed herewith.

Doris K. Thomsson  
County Commissioner for Emery County

11 Dec 1992  
Date

Neil D. Anderson  
Utah State Director  
U.S. Bureau of Land Management

11 Dec 1992  
Date

Approved this 14<sup>th</sup> day of December, 1992.

David L. ...  
UNITED STATES DISTRICT COURT JUDGE

United States District Court  
for the  
District of Utah  
December 15, 1992

mr

\* \* MAILING CERTIFICATE OF CLERK \* \*

Re: 2:92-cv-01069

True and correct copies of the attached were mailed by the clerk to the following:

Daniel D Price, Esq.  
U.S. ATTORNEY'S OFFICE  
350 South Main #476  
Salt Lake City, UT 84101

Joseph W. Anderson, Esq.  
U.S. ATTORNEY'S OFFICE  
350 South Main #476  
Salt Lake City, UT 84101

## APPENDIX V

### STATE STATUTE AND CASE LAW SUMMARIES

Appendix V contains summaries of State statutes and case law relevant to public highways and R.S. 2477 rights-of-ways. The purpose of the summaries is to illustrate the differences between States. The summaries are not intended to be all inclusive and do not attempt to give a complete statutory history

A . . . . .	Alaska
B . . . . .	Arizona
C . . . . .	California
D . . . . .	Colorado
E . . . . .	Idaho
F . . . . .	Kansas
G . . . . .	Montana
H . . . . .	Nebraska
I . . . . .	Nevada
J . . . . .	New Mexico
K . . . . .	North Dakota
L . . . . .	Oklahoma
M . . . . .	Oregon
N . . . . .	South Dakota
O . . . . .	Utah
P . . . . .	Washington
Q . . . . .	Wyoming

## ALASKA

### STATUTES

ALASKA STAT. § 19.10.010 (1988 & Supp. 1992) (section lines dedicated for use as public highways, enacted 1953)

ALASKA STAT. § 19.10.015 (1988) (establishment of highway widths, enacted 1963, amended 1980)

ALASKA STAT. § 19.45.001(9) (1988 & Supp. 1992) (definition of highway, enacted 1961)

Note: The Alaska territorial legislature accepted the federal grant of public lands for highway purposes in 1923. (19 SLA 1923, reenacted as 1721 CLA 1933, repealed by 1 SLA 1949). 19 SLA 1923 had similar provisions to ALASKA STAT. § 19.10.010. Brice v. State, Div. of Forest, Land & Water, 669 P.2d 1311 (Alaska 1983)

### CASES

Hammerly v. Denton, 359 P.2d 121 (Alaska 1961)

Mercer v. Yutan Construction Co., 420 P.2d 323 (Alaska 1966)

Girves v. Kenai Peninsula Borough, 536 P.2d 1221 (Alaska 1975) (citing ALASKA STAT. § 19.10.010)

Fisher v. Golden Valley Elec. Ass'n, Inc., 658 P.2d 127 (Alaska 1983) (citing ALASKA STAT. § 19.10.010)

State v. Alaska Land Title Ass'n, 667 P.2d 714 (Alaska 1983)

Brice v. State, Div. of Forest, Land & Water, 669 P.2d 1311 (Alaska 1983)

Dillingham Comm. Co., Inc. v. City of Dillingham, 705 P.2d 410 (Alaska 1985)

Summary: To complete the grant offered in 43 U.S.C. § 932, there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted. Dillingham at 413 citing Hammerly. ALASKA STAT. § 19.10.010 was held to constitute an acceptance of the grant. Girves at 1226. The statutory period of use is ten years. Dillingham at 415.

### LAW REVIEW ARTICLES

Leroy K. Latta, Jr., Public Access Over Alaska Public Lands As Granted by Section 8 of the Lode Mining Act of 1866, 28 Santa Clara L. Rev. 811 (1988).

## ARIZONA

### STATUTES

ARIZ. REV. STAT. ANN. § 18-201 (1990) (Title 18 - Highways and Bridges, Ch. 2 - County Highways; establishing, altering or abandoning local highways, original source was Par. 3972 CIVIL CODE 1901 (effect. 1871), which has remained effective and substantially the same to the present. Par. 3972 eventually became ARIZ. REV. STAT. §§ 18-201 through 18-205 (1956) (§§ 18-204, 18-205 were repealed 1961))

ARIZ. REV. STAT. ANN. § 28-1862 (1989 & Supp. 1992) (Title 28, Ch. 13, Art. 4 - State Highways and Routes; width of highways; errors in establishing (enacted 1973); formerly Title 18 - Highways and Bridges, Chap. 1 - State Highways, ARIZ. REV. STAT. § 18-152 (enacted 1927, repealed 1973))

### CASES

Territory v. Richardson, 76 P. 456 (Ariz. 1904) (public highways are such only as come within the express provisions of the statutes declaring them to be such, citing Par. 3956, 3972, 3990 REVISED STATUTES 1901)

Tucson Consol. Copper Co. v. Reese, 100 P. 777 (Ariz. 1909) (the establishment of public highways is governed entirely by statute, roads established otherwise are not public highways, RS2477 is not to be construed as contrary to the laws of the state or territory, Arizona has no territorial statutes which recognize that a public highway may be established by adverse user or prescription, citing Par. 3956, 3972 CIVIL CODE 1901 (in effect since 1871))

Duffield v. Ashurst, 100 P. 820 (Ariz. 1909) (the status of the Bright Angel trail as a public highway, constructed, as it was, under the grant of RS2477, prior to the establishment of the Grand canyon forest reserve, is permanently fixed. The establishment of the reserve did not operate to change that status)

State v. Crawford, 441 P.2d 586 (Ariz. Ct. App. 1968) (in order for there to be a public highway, the right-of-way for which is granted by RS2477, the highway must be established in strict compliance with the provisions of Arizona law, citing ARIZ. REV. STAT. § 18-154(a) (enacted 1927, repealed 1973))

County of Cochise v. Pioneer Nat'l Title Ins. Co., 565 P.2d 887 (Ariz. Ct. App. 1977) (in order for there to be a public highway, the right-of-way for which is granted by RS2477, the highway must be established in strict compliance with the provisions of Arizona law, citing Par. 3972 CIVIL CODE 1901; ARIZ. REV. STAT. §§ 18-152, 18-152(A) (enacted 1927, repealed 1973))

## CALIFORNIA

### STATUTES

CAL. STREETS AND HIGHWAYS CODE § 25 (West 1990) (definition of "county highway", enacted 1935, derived from Political Code § 2618 (1883-1935))

CAL. STREETS AND HIGHWAYS CODE § 978 (West 1990) (federal grant of property to county for highway purposes)

### CASES

McRose v Bottyer, 22 P. 393 (Cal. 1889)

Bequette v. Patterson, 37 P.917 (Cal. 1894)

Schwerdtle v. Placer County, 41 P.448 (Cal. 1895) (citing St. 1870, p. 457)

Sutton v. Nicolaisen, 44 P. 805 (Cal. 1896) (citing Pol. Code § 2619, enacted 1873, amended by Act of March 30, 1874, repealed 1883)

Town of Red Bluff v. Walbridge, 116 P. 77 (Cal. Ct. App. 1911)

People v. Quong Sing, 127 P. 1052 (Cal. Ct. App. 1912) (citing Pol. Code § 2619)

Central Pacific Ry. Co. v. Alameda County, 299 P. 77 (Cal. 1931)

Ball v. Stephens, 158 P.2d 207 (Cal. Ct. App. 1945) (citing Pol. Code § 2618 as reenacted in 1883 and in force until 1935)

Summary: Acceptance of the offer of the government could be manifested and dedication could be effected by selection of a route and its establishment as a highway by public authority. Dedication could also be effected without action by the state or county, by the laying out of a road and its use by the public sufficient in law to constitute an acceptance by the public of an offer of dedication. In order that a road should become a public highway, it must be established in accordance with the law of the state in which it is located. Ball at 209.



## COLORADO

### STATUTES

COLO. REV. STAT. § 43-1-202 (1984) (public highways or roads, formerly § 120-3-2 (1953), adopted in 1921)

COLO. REV. STAT. § 43-2-201 (1984) (public highways declared, formerly § 120-1-1 (1953), adopted in 1921, source L. 1883, p.251, § 1)

### CASES

Estes Park Toll-Road Co. v. Edwards, 32 P. 549 (Colo. Ct. App. 1893)

Sprague v. Stead, 139 P. 544 (Colo. 1914) (grant accepted by public use of road.)

Korf v. Itten, 169 P. 148 (Colo. 1917) (citing § 5834, Revised Statutes 1908, which provided that the board of county commissioners may declare any section or township line on the public domain a public highway, held to be authorized by RS2477)

Greiner v. Board of Comm'rs of Park County, 173 P.719 (Colo. 1918) (school sections, grant accepted by public user)

Nicholas v. Grassle, 267 P. 196 (Colo. 1928) (use of way by those for whom it was necessary was an "acceptance, a road may be a highway though it reaches but one user, construction not required)

Rozman v. Allen, 68 P.2d 440 (Colo. 1937) (stock driveway)

Leach v. Manhart, 77 P.2d 652 (Colo. 1938) (acceptance by user, construction or action by public authorities not required, citing '35 C.S.A. c. 143, § 44, C.L. 1921, § 1290, which provided that the board of county commissioners could declare a section line to be a public highway)

Uhl v. McEndaffer, 225 P.2d 839 (Colo. 1950) (refers to an 1889 resolution passed by the board of county commissioners declaring all section and township lines on the public domain in the county to be public highways, acceptance by use)

Martino v. Board of County Comm'rs of County of Pueblo, 360 P.2d 804 (Colo. 1961) (citing C.R.S. §§ 120-1-1, 120-3-2 (1953), also C.R.S. §§ 120-3-18, 120-1-4, 120-1-5 (1953) now 43-1-218, 43-2-204 and 43-2-205 (1984 & Supp. 1992) respectively)

COLORADO

CASES cont.

Board of County Commissioners of County of Ouray v. Masden, 385 P. 2d 601 (Colo. 1963) (citing C.R.S. § 120-1-1 (1953) to define public highway)

Brown v. Jolley, 387 P.2d 278 (Colo. 1963) (citing C.R.S. §§ 120-1-1, 120-3-2 (1953), road is highway as defined by statute)

## IDAHO

### STATUTES

IDAHO CODE § 40-109(5) (1985 & Supp. 1992) (definition of "highways", formerly 40-107(1947))

IDAHO CODE § 40-117(4) (1985) (definition of "public highways", formerly 40-2604(e) (1977))

IDAHO CODE § 40-202 (1985 & Supp. 1992) (recorded and worked highways, formerly 40-103 (1947), the exact language of this section is incorporated into 40-109(5))

IDAHO CODE § 40-604 (1985 & Supp. 1992) (duties and powers of commissioners with respect to highways, formerly 40-133 and 40-501(1947))

NOTE: Former Title 40 of the Idaho Code was repealed in its entirety in 1985. A new Title 40 was substituted. Various statutes with language similar to IDAHO CODE § 40-109(5) have been in effect since approximately 1887. IDAHO CODE § 40-109(5) appears to be a compilation of these prior statutes. See Rich at 1089.

### CASES

Gooding Highway Dist. of Gooding County v. Idaho Irr. Co., 164 P. 99 (Idaho 1917) (concerns "Carey Act" land, cites §§ 916, 934 Rev. Codes (????) prescribing how and who could establish public highways)

Oregon Short Line R. Co. v. Pfost, 27 P.2d 877 (Idaho 1933) (the term "highway" does not include railroads; citing § 850, Rev. St. 1887 (§ 874, Rev. Codes), as defining the word "highway."; citing § 39-101 Idaho Code Ann. (1932))

Kirk v. Schultz, 119 P.2d 266 (Idaho 1941) (there must be either user by the public under the laws of the State or some positive act by the proper public authorities to accept grant; citing 1881 Session Laws, sec. 1, page 277; § 851, Rev. St. 1887 stating what constituted a highway)

Rich v. Burdick, 362 P.2d 1088 (Idaho 1961) (citing IDAHO CODE §§ 40-101 (§ 850, Rev. St. 1887; § 874, Rev. Codes; Idaho Code Ann. § 39-101 (repealed 1950)); IDAHO CODE § 40-103 (§ 851 Rev. St.; Idaho Code Ann § 39-103); IDAHO CODE § 40-402 (enacted 1939, repealed 1951, reenacted 1951 essentially the same as IDAHO CODE § 40-107))

Roper v. Elkhorn at Sun Valley, 605 P.2d 968 (Idaho 1980)

French v. Sorensen, 751 P.2d 98 (Idaho 1988) (citing IDAHO CODE § 40-202)

## KANSAS

### STATUTES

KAN. STAT. ANN. §§ 68-101 to 68-106 (1985) (general provisions, roads; en. 1911, history uncertain, has source in 1864 Kan. Sess. Laws, ch. 112, §§ 1-5)

### CASES

Tholl v. Koles, 70 P. 881 (Kan. 1902) (citing Laws 1867, c. 67, declared all section lines in Washington county to be highways, subsequently amended to include other counties, held to constitute an acceptance of the congressional grant)

Walbridge v. Board of County Comm'rs of Russell County, 86 P. 473 (Kan. 1906) (held that the act of the Legislature of Kansas in 1873 (Laws 1873, p. 230, c. 122), which declared all section lines in Russell County to be public roads, was an acceptance of the RS 2477 grant, also citing § 6058, Gen. St. 1901, concerning the "opening" of roads)

Molyneux v. Grimes, 98 P.278 (Kan. 1908) (citing §§ 6018, 6020, 6021, Gen. St. 1901, concerning the requirements of the road law and the procedures to establish a public road)

Hughes v. Veal, 114 P. 1082 (Kan. 1911) (the congressional grant for public highways may be accepted by the acts of the public authorities, or by the public itself, or by the concurrent action of both)

Lockard v. Hartley, 145 P. 900 (Kan. 1915)

## MONTANA

### STATUTES

MONT. CODE ANN. § 60-1-103 (1991) (General definitions, enacted 1965, R.C.M. 1947, § 32-2203(part))

MONT. CODE ANN. § 60-1-201 (1991) (Classification - highways and roads, enacted 1965, R.C.M. 1947, § 32-2301.)

MONT. CODE ANN. § 60-4-101, 60-4-102 (1991) (Rights acquired by public in highway; general power of department of transportation to acquire interests in property, enacted 1965, R.C.M. 1947, §§ 32-3901, 32-3902)

NOTE: History uncertain before 1947. Need to establish link between present statutes and those cited in the case law.

### CASES

City of Butte v. Mikosowitz, 102 P. 593 (Mont. 1909) (in using the term "highway, the Congress must have intended such a highway as is recognized by the local laws, customs and usages, citing § 1339, Rev. Codes, (1907?) providing that state public highways are generally 60 feet wide)

State ex rel. Danise v. Nolan, 191 P. 150 (Mont. 1920) (The grant is but an offer of the right of way for the construction of a public highway and can only become fixed when a highway is definitely established and constructed in some one of the ways authorized by the laws of the state; citing §§ 1337, 1340, Rev. Codes 1907 (enacted 1903, repealed 1913) as reenactments of §§ 2600, 2603, Pol. Code 1895; § 1337 (reenacted as § 3, Ch. 1, General Highway Law, 1913-15) describes what constitutes a public highway, § 1340 (omitted from the General Highway Law of 1913-15) concerns establishment of a road by use)

Moulton v. Irish 218 P. 1053 (Mont. 1923) (federal grant of right of way for highway purposes over public domain does not become operative until accepted by construction of highway according to the provisions of the law the state; citing § 1612, Rev. Codes 1921, originally enacted as § 2600, Pol. Code 1895; citing § 1340, Rev. Codes 1907, originally enacted as § 2603, Pol. Code 1895)

Warren v. Chouteau County, 265 P. 676 (Mont. 1928) (citing Moulton, i.e., federal grant of right of way for highway purposes over public domain does not become operative until accepted by construction of highway according to the provisions of the law the state; citing § 2603, Pol. Code 1895, later § 1340, Rev. Codes 1907, repealed by the General Highway Law, Chap. 72, L. 1913; citing § 2600, Pol. Code 1895, later § 1337, Rev. Codes 1907, repealed by Chap. 72, L. 1913, reenacted as § 3 of the

MONTANA

CASES cont.

General Highway Law of 1913, later § 1612, Rev. Codes 1921; citing §§ 2750, 2759, Pol. Code 1895, providing for establishment of a highway through petition and a formal order declaring a public highway by board of county commissioners)

Parker v. Elder, 758 P.2d 292 (Mont. 1988) (citing Nolan, i.e., the grant is but an offer of the right of way for the construction of a public highway and can only become fixed when a highway is definitely established and constructed in some one of the ways authorized by the laws of the state, citing § 1339, Rev. Codes (1915), formerly § 1337, Rev. Codes (1907))

## NEBRASKA

### STATUTES

NEB. REV. STAT. § 39-1410 (1988) (County roads - General provisions, section lines declared roads, enacted 1957, language is virtually identical to L. 1879, p. 130, § 46; Comp. St. 1905, c. 78, § 46 (See Scotts Bluff at 297)

NEB. REV. STAT. § 39-1402 (1988) (County roads - General provisions, public roads, supervision by county board, enacted 1957)

NEB. REV. STAT. § 39-1401 (1988) (County roads - General provisions, terms defined, county board, public roads, enacted 1957)

NEB. REV. STAT. § 39-1302(12)(20)(21)(26) (1988) (State highways, terms defined, enacted 1955)

### CASES

Streeter v. Stalnaker, 85 N.W. 47 (Neb. 1901) (evidence of long, continued use by the public tends to show the establishment of a road by dedication over the public domain. So, also, does the surveying, marking out, platting and improvement of a road by the public authorities)

Van Wanning v. Deeter, 110 N.W. 703 (Neb. 1907) (an acceptance of the federal grant may be shown by the acts of the public authorities, or by the acts of the public itself)

Scotts Bluff County v. Tri-State Land Co., 142 N.W. 296 (Neb. 1913) (citing L. 1879, p. 130, § 46, Comp. St. 1905, c. 78, § 46, declaring section lines in each county of the state to be public roads)

County of Banner v. Young, 169 N.W.2d 280 (Neb. 1969) (citing L. 1879, p. 130, § 46, opening public roads on section lines in the state as accepting the congressional grant of 1866)

NEVADA

STATUTES

NEV. REV. STAT. ANN. § 403.090 (Michie 1991) (general powers of board of county commissioners over public highways, enacted 1913)

NEV. REV. STAT. ANN. § 403.410 (Michie 1991) (public highways, enacted 1866)

NEV. REV. STAT. ANN. § 403.430 (Michie 1991) (procedure for opening public road, enacted 1866)

NOTE: The following statutes were found, but date of enactment is after 1976. Need to find if there's any prior history.

NEV. REV. STAT. ANN. § 244.277 (Michie 1986) (acceptance of grant of right-of-way over federal lands, enacted 1977); apparently in effect since 1917 (§ 3008, Rev. Laws of Nevada, see AG opinion, State of Nevada, letter to Mr. Russell A. Fields dated 4-13-92, page 4))

NEV. REV. STAT. ANN. § 405.191(2) (Michie 1991) ("Public road" defined, refers specifically to RS 2477 roads on or before July 1, 1979, enacted 1979)

NEV. REV. STAT. ANN. § 405.193 (Michie 1991) (public agency not required to accept or maintain roads meeting NRS § 405.191, enacted 1979)

NEV. REV. STAT. ANN. § 405.195 (Michie 1991) (action to prevent denial of public use of road qualifying under NRS § 405.191, enacted 1979)

CASES

Anderson v. Richards, 608 P.2d 1096 (Nev. 1980) (citing NRS § 403.410)



## NEW MEXICO

### STATUTES

N.M. STAT. ANN. § 67-2-1 (1978 & Supp. 1992) (definition of public highways, originally enacted in 1905, former codification includes § 58-101, N.M. STAT. (1941); § 55-1-1, N.M. STAT. ANN. (1953))

N.M. STAT. ANN. § 67-5-1 (1978 & Supp. 1992) (county bridges, township and section lines are parts of public highways; width, originally enacted in 1891, former codification includes § 64-702, Comp. St. 1929)

N.M. STAT. ANN. § 67-5-2 (1978 & Supp. 1992) (width of public highways, enacted 1905)

N.M. STAT. ANN. § 67-5-5 (1978 & Supp. 1992) (alteration or establishment of roads, enacted 1905)

### CASES

Atchison, T. & S.F. Ry. Co. v. Richter 148 P. 478 (N.M. 1915) (when a valid entry has been made by a citizen, that portion of the public land covered by the entry is segregated from the public domain and is not subject to further entry, and is not included in subsequent grants made by Congress)

Frank A. Hubbell Co. v. Gutierrez, 22 P.2d 225 (N.M. 1933) (citing § 64-702, Comp. St. 1929, declaring section and township lines public highways, roads lying along section lines in county must be established under ordinary statutory proceedings for establishment of highways)

Wilson v. Williams, 87 P.2d 683 (N.M. 1939) (under federal statute granting right to establish highway over public land, generally the construction of a highway or establishment by user is sufficient)

King v. Brown 284 P.2d 214 (N.M. 1955) (upheld Wilson, public use is sufficient to constitute dedication of highway over public land)

State v. Walker, 301 P.2d 317 (N. M. 1956) (citing § 55-1-1, N.M. Stat. Ann. (1953), defining public highways, Enabling Act, school sections and RS 2477)

Lovelace v. Hightower, 168 P.2d 864 (N.M. 1946) (continuous use of a road for such time and under such circumstances as to clearly prove acceptance of federal grant will suffice to establish a highway regardless of the length of time of such user, citing § 58-101, N.M. Stat. (1941), discusses the history of RS 2477 in other states)

NEW MEXICO

CASES cont.

Luchetti v. Bandler, 777 P. 2d 1326 (N.M. Ct. App. 1989) (use of road to reach single private residence, hike, picnic, etc. was insufficient to require finding of acceptance of government's offer to dedicate road as a public highway)

## NORTH DAKOTA

### STATUTES

N.D. CENT. CODE § 24-07-03 (1991) (Section lines considered public roads, originally en. 1871 as L. 1871, ch. 33; am. 1897 as L. 1897, c. 112, § 3; former codification includes § 1920, Comp. Laws 1913; § 24-0703, N.D. Rev. Code (1943))

N.D. CENT. CODE § 24-07-04 (1991) (jurisdiction of proceedings to open or vacate highways, en. 1897, former codification includes § 1921, Comp. Laws 1913)

N.D. CENT. CODE § 24-07-01 (1991 & Supp. 1992) (en. 1897, public roads by prescription)

N.D. CENT. CODE § 24-07-02 (1991) (en. 1897, established roads are public highways)

### CASES

Walcott Tp. of Richland County v. Skauge, 71 N.W. 544 (N.D. 1897)

Wenberg v. Gibbs Tp., 153 N.W. 440 (N.D. 1915) (citing L. 1871, ch. 33, declaring all section lines in the territory to be public highways; citing § 1348, Rev. Codes 1905, providing for compensation of the owners of section lines opened as public highways)

Faxon v. Lallie Civil Tp., 163 N.W. 531 (N.D. 1917) (citing L. 1871, ch. 33, declaring all section lines in the territory to be public highways, held to be legislative acceptance of the congressional highway grant; citing L. 1897, ch. 112, § 3, section lines considered public roads)

Huffman v. Board of Supervisors of West Bay Tp., Benson County, 182 N.W. 459 (N.D. 1921) (citing L. 1871, ch. 33, a public highway was unquestionably established on a section line by virtue of the legislative acceptance of the federal grant)

Hillsboro Nat'l Bank v. Ackerman, 189 N.W. 657 (N.D. 1922) (citing §§ 1920, 1921 Compiled Laws (1913?), providing that section lines are public roads and who has jurisdiction to open such roads; citing L. 1871, ch. 33, as accepting the congressional highway grant)

Lalim v. Williams County, 105 N.W.2d 339 (N.D. 1960) (citing L. 1871, ch. 33; citing § 24-0703, N.D. Rev. Code (1943))

Small v. Burleigh County, 225 N.W.2d 295 (N.D. 1975) (citing § 24-07-03, N.D. CENT. CODE, section lines considered public roads, no action by public authorities is necessary, also cites several

NORTH DAKOTA

CASES cont.

other laws relating to section line roads, discusses legislative history and intent of laws)

Minot Sand & Gravel Co. v. Hjelle, 231 N.W.2d 721 N.D. 1975) (discusses extraction of minerals from beneath section lines)

DeLair v. County of LaMoure, 326 N.W.2d 55 (N.D. 1982) discusses history of § 24-07-03, N.D. CENT. CODE)

LAW REVIEW ARTICLES

Note, The Public Trust Doctrine in North Dakota, 54 N.D. L. REV. 565, 572 (1978)

OREGON

STATUTES

OR. REV. STAT. § 368.131 (1991) (right of way over United States public lands, formerly § 368.555(1953?))

OR. REV. STAT. § 368.001 (1991) (definition "public road", en. 1981)

OR. REV. STAT. § 368.016 (1991) (county authority over roads, en. 1981)

OR. REV. STAT. § 368.161 (1991) (use of road viewers to establish road, en. 1981))

CASES

Wallowa County v. Wade, 72 P. 793 (Or. 1903) (long continued user by the public together with the action of the county authorities in surveying and locating a road was sufficient to constitute an acceptance of the grant made by Congress for public highways)

Montgomery v. Somers, 90 P. 674 (Or. 1907) (an acceptance of the grant of congress may be effected by public user alone, without any action by the public highway authorities, citing B. & C. Comp. § 4790 (Session L. 1903, p. 267), providing that all county roads shall be 60 feet wide)

Wilkins v. Lane County, 671 P.2d 1178 (Or. Ct. App. 1983) (followed Wallowa)

## SOUTH DAKOTA

### STATUTES

S.D. CODIFIED LAWS ANN. § 31-18-1 (1984 & Supp. 1992) (existence of section line highways, orig. en. 1871 S.D. Laws ch.33, § 1; former codification includes 1877 Pol. Code ch. 29, § 1; § 1189, Comp. Laws 1887; § 1594, Rev. Pol. Code 1903)

S.D. CODIFIED LAWS ANN. § 31-18-2 (1984) (width of highways, orig. en. 1877; former codification includes 1877 Pol. Code ch. 29, § 3; § 1191, Comp. Laws 1887; § 1596, Rev. Pol. Code 1903)

S.D. CODIFIED LAWS ANN. § 31-18-3 (1984 & Supp. 1992) (vacation or change of location of highways, orig. en. 1869; former codification includes 1877 Pol. Code ch. 29, § 2; § 1190, Comp. Laws 1887; § 1595, Rev. Pol. Code 1903)

S.D. CODIFIED LAWS ANN. § 31-1-1 (1984) (en. 1929, highway defined)

S.D. CODIFIED LAWS ANN. § 31-3-1 (1984 & Supp. 1992) (en. 1877, dedication to public by continuous use)

S.D. CODIFIED LAWS ANN. § 31-3-2 (1984) (en. 1893, public highway not established by mere use)

### CASES

Wells v. Pennington County, 48 N.W. 305 (S.D. 1891) (citing §§ 1189, 1191 Comp. Laws 1887, declaring all section lines public highways (§ 1189), 66 ft. in width (§ 1191), held to be an acceptance of the congressional highway grant)

Smith v. Pennington, 48 N.W. 309 (S.D. 1891) (citing §§ 1189, 1191 Comp. Laws 1887, the territorial law declaring section lines to be public highways became operative as an acceptance of the congressional grant as soon as those lines were definitely settled)

Riverside Tp. v. Newton, 75 N.W. 899 (S.D. 1898) (citing §§ 1189, 1191 Comp. Laws 1887, the withholding of portions of public lands for school purposes was neither a "grant or reservation for public uses," within the exception of RS 2477)

City of Deadwood v. Whittaker, 81 N.W. 908 (S.D. 1900) (Indian lands)

Great Northern Ry. Co. v. Town of Viborg, 97 N.W. 6 (S.D. 1903) (the right of the public to use a section line highway is not impaired by incorporation of a town according to a plat)

SOUTH DAKOTA

CASES cont.

Lawrence v. Ewert, 114 N.W. 709 (S.D. 1908) (citing 1871 S.D. Laws ch.33, later carried into §§ 1594, 1595, 1596 Rev. Pol. Code (1903); also cites former law and discusses prior legislative history)

Sample v. Harter 156 N.W. 1016 (S.D. 1916) (citing §§ 1594, 1596 Rev. Pol. Code (1903))

Gustafson v. Gem Tp., 235 N.W. 712 (S.D. 1931) (citing 1871 S.D. Laws ch.33, § 1; now § 8519, Rev. Code 1919)

Pederson v. Canton Tp., 34 N.W.2d 172 (S.D. 1948) (citing 1871 S.D. Laws ch.33 as accepting dedication of Congress; citing § 28.0101, S.D.Code (1939), now S.D. CODIFIED LAWS ANN. § 31-1-1; citing § 28.0102, S.D.Code (1939), now S.D. CODIFIED LAWS ANN. § 31-18-1)

Costain v. Turner County, 36 N.W.2d 382 (S.D. 1949) (citing 1871 S.D. Laws ch.33; citing § 28.0105, S.D.Code (1939), now S.D. CODIFIED LAWS ANN. § 31-18-2)

Dave Gustafson Co. v. State, 169 N.W.2d 722 (S.D. 1969) (citing 1871 S.D. Laws ch.33; now embodied in S.D. CODIFIED LAWS ANN. § 31-18-1 (1967))

Thormodsgard v. Wayne Township Board of Supervisors, 310 N.W.2d 157 (S.D. 1981) (citing S.D. CODIFIED LAWS ANN. §§ 31-18-1, 31-3-1)

## UTAH

### STATUTES

UTAH CODE ANN. § 27-12-2(8) (1989 & Supp. 1991) (en. 1963, definition of "public highway")

UTAH CODE ANN. § 27-12-89 (1989) (en. 1963, public use constituting dedication, originally enacted as 1886 Utah Laws, ch. 12; formerly codified as § 2066, Comp. Laws 1888; § 1115, Rev. Stat. 1898 & Comp. Laws 1907; § 2801, Comp. Laws 1917; § 36-1-2, Rev. Stat. 1933 & Utah Code Ann. 1943; § 27-1-2, Utah Code Ann. 1953)

UTAH CODE ANN. § 27-12-90 (1989) (en. 1963, highways once established continue until abandoned, formerly codified as § 1116, Comp. Laws 1907; § 2802, Comp. Laws 1917; § 27-1-3, Utah Code Ann. 1953)

UTAH CODE ANN. § 27-12-92 (1989) (en. 1963, United States patents)

UTAH CODE ANN. § 27-12-93 (1989) (en. 1963, width of rights-of-way for public highways, prior history not known)

UTAH CODE ANN. § 27-12-25 (1989) (en. 1963, control of highways not otherwise designated, prior history not known)

### CASES

Lindsay Land & Livestock Co. v. Churnos, 285 P. 646 (Utah 1930) (citing 1880 Utah Laws, ch. 29, §§ 2,3 (§ 2 has language similar to UTAH CODE ANN. §27-12-2(8) (1989)); citing 1886 Utah Laws, ch. 12, § 2 (contains language similar to UTAH CODE ANN. §27-12-89 (1989)); held that public use over period of years was sufficient to constitute an acceptance of congressional grant, road width determined by what is reasonable and necessary)

Sullivan v. Condas, 290 P. 954 (Utah 1930) (citing 1880 Utah Laws, ch. 29; 1886 Utah Laws, ch. 12; § 2066, Comp. Laws 1888; § 1115, Rev. Stat. 1898; § 2802, Comp. Laws 1917)

Jeremy v. Bertagnole, 116 P. 2d 429 (Utah 1941) (citing 1880 Utah Laws, ch. 29, §§ 2,3; citing 1886 Utah Laws, ch. 12, § 2)

Oregon Short Line Railroad Co. v. Murray City, 277 P.2d 798 (Utah 1954) (citing § 1115, Rev. Stat. 1898 & Comp. Laws 1907; § 2801, Comp. Laws 1917; § 36-1-2, Rev. Stat. 1933 & Utah Code Ann. 1943; § 27-1-2, Utah Code Ann. 1953)

Boyer v. Clark, 326 P.2d 107 (Utah 1958) (citing Utah Code Ann. § 27-1-3 (1953))

Clark v. Erekson, 341 P.2d 424 (Utah 1959) (citing Utah Code Ann. §§ 27-1-2, 27-1-3 (1953))



UTAH

CASES cont.

Cassity v. Castagno, 347 P.2d 834 (Utah 1959) (evidence insufficient to show that trail constituted public highway under federal grant)

Thomson v. Condas, 493 P.2d 639 (Utah 1972) (dissenting opinion citing 1886 Utah Laws, ch. 12, § 2, in substance the same as Utah Code Ann. § 27-12-89 (1953, Replacement Vol. 3); citing § 1116, Rev. Stat. 1898, which is practically identical to Utah Code Ann. § 27-12-90 (1953, Replacement Vol. 3))

Memmott v. Anderson, 642 P.2d 750 (Utah 1982) (citing Utah Code Ann. § 27-12-2(8) (1953); citing Utah Code Ann. § 27-12-89 (1953))

## WASHINGTON

### STATUTES

WASH. REV. CODE ANN. § 36.85.030 (1991) (en. 1963, acceptance of federal grants over public lands; originally enacted as Laws 1903, p. 155, c. 103; formerly § 6450-17, Remington's Rev. Stat. (1932); § 5607, Remington & Ballinger's Code (1910))

WASH. REV. CODE ANN. § 36.85.040 (1991) (en. 1963, acceptance of federal grants over public lands - prior acceptance ratified; originally enacted as Laws 1903, p. 155, c. 103; formerly § 6450-18, Remington's Rev. Stat. (1932); § 5608, Remington & Ballinger's Code (1910))

### CASES

Smith v. Mitchell, 58 P. 667 (Wash. 1899) (RS 2477 is a grant for highways without any limitations as to the method for their establishment; a highway may be established in any of the ways recognized by the law of the state in which such lands are located; in this state, highways may be established by prescription, dedication, user or proceedings under statute)

Okanogan County v. Cheetham, 80 P. 262 (Wash. 1905) (citing Laws 1903, p. 155, c. 103, authorized boards of county commissioners to accept rights of way for highways as granted by RS 2477, provided that nothing in the statute should be construed to invalidate the acceptance of such grant by general public use and enjoyment, held that public user constituted an acceptance of the grant without any resolution of the board of county commissioners accepting the highway)

Peterson v. Baker, 81 P. 681 (Wash. 1905) (citing § 3846, Ballinger's Ann. Codes & St. (1897?), declaring all public roads and highways used as such for not less than seven years to be lawful roads and highways, school lands are not "reserved for public uses" within the meaning of RS 2477)

McAllister v. Okanogan County 100 P. 146 (Wash. 1909) (citing Laws 1903, p. 155, c. 103, overturned the holding in Cheetham that the grant is a grant in praesenti, held that the grant remains in abeyance until a highway is established under some public law authorizing it and takes effect from that time)

Stofferan v. Okanogan County, 136 P. 484 (Wash. 1913) (citing Laws 1903, c. 103, §§ 5607, 5608, Rem. & Bal. Code (1910?), authorizing the boards of county commissioners to accept the grant for public highways and ratifying any action already taken by the boards purporting to accept such grant; citing § 5657, Rem. & Bal. Code (1910?), providing that roads may be established by prescription by use by the public for not less than seven years; upheld McAllister ruling that the grant is not a grant in praesenti)

WASHINGTON

CASES cont.

Rodiger v. Cullen, 175 P.2d 669 (Wash. 1946)

## WYOMING

### STATUTES

WYO. STAT. § 24-1-101 (1977 & Supp. 1991) (originally enacted as 1895 Wyo. Sess. Laws ch. 69, § 1; public highways defined and established; former laws and codifications include 1919 Wyo. Sess. Laws, ch. 112, § 1; § 2977, Comp. Stat. 1920; 1921 Wyo. Sess. Laws ch. 100, § 1;)

### CASES

Hatch Bros. Co. v. Black, 165 P. 518 (Wyo. 1917) (citing 1895 Wyo. Sess. Laws ch. 69, § 1 (source of present statute); also cites prior legislative history to 1869)

Hatch Bros. Co. v. Black, 165 P. 267 (Wyo. 1918) (extensive legislative history and discussion of early laws concerning public highways)

Bishop v. Hawley, 238 P. 284 (Wyo. 1925) (citing 1919 Wyo. Sess. Laws, ch. 112; § 2977, Comp. Stat. 1920; 1921 Wyo. Sess. Laws ch. 100; grant of highway is a dedication, effective on acceptance by construction or establishment by public user)

Cottman v. Lochner, 278 P. 71 (Wyo. 1929) (citing § 2997, Comp. Stat. 1920)

Nixon v. Edwards, 264 P.2d 287 (Wyo. 1953) (extensive legislative history and discussion of early laws concerning public highways)

APPENDIX VI

ALTERNATIVE NO. 2 - H.R. 1096

Exhibit

A . . . . . H.R. 1096, 102d Cong., 1st Sess. (1991)

102D CONGRESS  
1ST SESSION

# H. R. 1096

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IN THE SENATE OF THE UNITED STATES

JULY 24 (legislative day, JULY 8), 1991

Received; read twice and referred to the Committee on Energy and Natural Resources

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## AN ACT

To authorize appropriations for programs, functions, and activities of the Bureau of Land Management for fiscal years 1992, 1993, 1994, and 1995; to improve the management of the public lands; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. AUTHORIZATION.**

4 There are hereby authorized to be appropriated such  
5 sums as may be necessary for programs, functions, and  
6 activities of the Bureau of Land Management, Depart-  
7 ment of the Interior (including amounts necessary for in-  
8 creases in salary, pay, retirements, and other employee

1 to denial thereof, shall be subject to judicial review in ac-  
 2 cordance with and to the extent provided by the Adminis-  
 3 trative Procedure Act (5 U.S.C. 551-559 and 701 et seq.).  
 4 For the purposes of this section, the term 'rule' has the  
 5 same meaning as such term has in the Administrative Pro-  
 6 cedure Act (5 U.S.C. 551(4))."

7 (b) The table of contents of the Act is amended by  
 8 inserting after the item relating to section 707 the follow-  
 9 ing new item:

"Sec. 708. Judicial review."

10 **SEC. 15. CLAIMED RIGHTS-OF-WAY.**

11 The Act is hereby amended by adding at the end of  
 12 title III the following new sections 319 and 320:

13 **"SEC. 319. RECORDATION OF CLAIMED RIGHTS-OF-WAY.**

14 "(a) **FILING REQUIREMENTS.**—(1) Any party claim-  
 15 ing to be a holder of a right-of-way across public or other  
 16 Federal lands for the construction of a highway pursuant  
 17 to a grant made by Revised Statutes section 2477 (43  
 18 U.S.C. 932) that became operative before repeal of such  
 19 section on October 21, 1976, shall, on or before January  
 20 1, 1994, file for record in the office or offices of the Bu-  
 21 reau of Land Management responsible for management of  
 22 public lands within the State or States wherein such  
 23 claimed right-of-way is located either a notice of intent  
 24 to hold and maintain the right-of-way or a notice of aban-  
 25 donment of such party's claim to be the holder of such

1 right-of-way. A notice of intent to hold and maintain such  
2 a right-of-way shall be accompanied by information con-  
3 cerning the actual construction, maintenance, and public  
4 use on which such party bases its claim to have established  
5 such a right-of-way, and by such other information regard-  
6 ing the uses, location, and extent of such claimed right-  
7 of-way as the Secretary of the Interior may require. The  
8 Secretary may allow information already in the possession  
9 of the Bureau of Land Management to be included by ref-  
10 erence to the documents in which such information is re-  
11 corded.

12       “(2) A party filing a notice pursuant to paragraph  
13 (1) shall also simultaneously file a copy thereof in the ap-  
14 propriate office of any other agency responsible for man-  
15 agement of any Federal lands traversed by the claimed  
16 right-of-way, and shall give public notice of the party's in-  
17 tention to hold and maintain or to abandon the claimed  
18 right-of-way by publication of information concerning such  
19 intention in one or more newspapers of general circulation  
20 in the areas where the affected lands are located.

21       “(b) EFFECT.—(1) The failure of any party subject  
22 to the requirements of subsection (a) to file the notices  
23 or to publish the information required to be filed and pub-  
24 lished by such subsection within the time specified by such  
25 subsection shall be conclusively deemed to constitute an



1 abandonment and relinquishment of a right-of-way with  
2 respect to which such filing and publication is required  
3 by such subsection.

4       “(2) Recordation pursuant to this section shall not.  
5 of itself, render valid any claim which would not otherwise  
6 be valid under applicable law or provide a basis for chang-  
7 ing the scope, alignment, or character or extent of use of  
8 any claimed right-of-way; and nothing in this section shall  
9 be construed as waiving, altering, or otherwise affecting  
10 any terms or conditions applicable to any right-of-way  
11 under this Act or any other applicable law.

12       “(c) INVESTIGATIONS.—(1) Upon receipt of a notice  
13 filed pursuant to subsection (a) that a party intends to  
14 hold and maintain a claimed right-of-way involving any  
15 lands specified in paragraph (2) of this subsection, the  
16 Secretary of the Interior, acting through an appropriate  
17 officer of the Bureau of Land Management or (if any por-  
18 tion of a claimed right-of-way covered by this subsection  
19 is located within a unit of the National Park System) of  
20 the National Park Service, shall conduct an investigation  
21 to determine the validity of each such claimed right-of-  
22 way. The Secretary shall provide an opportunity for the  
23 public to contest or request an investigation of the validity  
24 of any other claimed right-of-way.

1       “(2)(A) The Secretary shall investigate the validity  
2 of each claimed right-of-way any portion of which  
3 involves—

4               “(i) any lands within the National Park Sys-  
5 tem, the National Wild and Scenic River System, or  
6 the National Wilderness Preservation System; or

7               “(ii) any lands being managed so as to preserve  
8 their suitability for designation as wilderness, pursu-  
9 ant to section 603 of this Act or any other provision  
10 of law or regulation; or

11               “(iii) any area of critical environmental con-  
12 cern; or

13               “(iv) any other lands whose use for highway  
14 purposes would be inconsistent with the land-use  
15 plans for those lands.

16       “(B) The Secretary shall also investigate any claimed  
17 right-of-way not involving lands specified in subparagraph  
18 (A) but with respect to which a challenge is filed that  
19 states grounds which, if proved or confirmed, would con-  
20 stitute reason to doubt the validity of such claimed right-  
21 or-way or any portion thereof.

22       “(3) If any portion of such claimed right-of-way is  
23 on Federal lands managed by an agency other than the  
24 Bureau of Land Management or the National Park Serv-  
25 ice, the investigating officer shall request the comments

1 of such agency with respect to the validity of such right-  
2 of-way.

3       “(4) Appropriate notice to the public, including the  
4 owners of any non-Federal lands affected by the claimed  
5 right-of-way, shall be provided with respect to initiation  
6 of each investigation carried out pursuant to this para-  
7 graph, and the investigating officer shall provide an oppor-  
8 tunity for the public to submit comments concerning the  
9 subject of the investigation.

10       “(5) If information or comments submitted to the in-  
11 vestigating officer demonstrate that there is a dispute as  
12 to any relevant facts with respect to the validity of a right-  
13 of-way subject to an investigation under this paragraph,  
14 the parties to such dispute shall be afforded an adjudica-  
15 tory hearing on the record with respect to such disputed  
16 issues of fact. Any such adjudicatory hearing shall be be-  
17 fore a qualified administrative law judge whose findings  
18 shall govern disposition of such issues of fact in any deter-  
19 mination concerning the validity of a claimed right-of-way,  
20 subject to administrative and judicial review under appli-  
21 cable provisions of law.

22       “(6) If after an investigation pursuant to this para-  
23 graph, the investigating officer finds either that a claimed  
24 right-of-way or portion thereof is valid or that there is rea-  
25 son to doubt the validity of such claimed right-of-way or

1 portion thereof, notice of such finding and the reasons  
2 therefor shall be provided to the party claiming the right-  
3 of-way and to all other affected parties, including the pub-  
4 lic.

5       “(7) For purposes of this section, if any portion of  
6 a claimed right-of-way includes lands managed pursuant  
7 to section 603 of this Act, that fact shall constitute a rea-  
8 son to doubt the validity of such portion of such right-  
9 of-way.

10       “(d) APPEALS.—(1) Any claimed right-of-way or por-  
11 tion thereof with respect to which it is found, pursuant  
12 to subsection (b), that there is reason to doubt the validi-  
13 ty, shall be deemed to be invalid unless, within 30 days  
14 after such finding the party claiming the right-of-way has  
15 filed with the Secretary of the Interior an appeal of such  
16 finding, and the Secretary thereafter determines the right-  
17 of-way to be valid. Any party other than the party claim-  
18 ing the right-of-way, may intervene in any appeal filed  
19 under this paragraph in support of the finding of invalidi-  
20 ty by filing with the Secretary a notice of such intervention  
21 within the period allowed for filing of the appeal.

22       “(2) Any finding by the investigating officer with re-  
23 gard to the validity or invalidity of a claimed right-of-way  
24 or portion thereof valid shall become final unless within

1 30 days after such finding a notice of appeal of such find-  
2 ing is filed with the Secretary of the Interior.

3       “(3) Any decision by the Secretary with regard to an  
4 appeal under this subsection shall be made after the party  
5 claiming or contesting a right-of-way has been provided  
6 with the evidence upon which the investigating officer's  
7 finding regarding its validity or invalidity was based and  
8 has been given an opportunity to respond, including an  
9 adjudicatory hearing on the record with respect to any dis-  
10 puted issues of fact.

11       “(4)(A) Pending a final determination of validity with  
12 respect to a claimed right-of-way that is subject to an ap-  
13 peal under this subsection, the Federal land covered by  
14 such claimed right-of-way shall be managed in accordance  
15 with applicable law (including this Act) and management  
16 plans as if such right-of-way did not exist, except that  
17 such lands may continue to be used for lawful transporta-  
18 tion, access, and related purposes of the same nature and  
19 to the same extent as was properly permitted by the Secre-  
20 tary on the date of enactment of this section. Any such  
21 continued uses shall be subject to appropriate regulations  
22 to protect the resources and values of the affected lands.

23       “(B) Upon a final determination of invalidity with re-  
24 spect to a claimed right-of-way subject to an appeal under  
25 paragraph (3), Federal lands covered by such claimed

1 right-of-way shall be managed in accordance with applica-  
2 ble law and management plans.

3       “(C) A determination by an investigating officer as  
4 to the validity or invalidity of a claimed right-of-way may  
5 be appealed to the Secretary by any person, provided such  
6 appeal is made no later than 30 days after the determina-  
7 tion of the investigating officer. Any person filing such an  
8 appeal shall be afforded an adjudicatory hearing on the  
9 record with regard to any disputed issue of fact. Any deci-  
10 sion of the Secretary regarding such an appeal shall be  
11 subject to judicial review.

12       “(5) Any decision by the Secretary pursuant to this  
13 subsection shall be subject to judicial review under appli-  
14 cable provisions of law, but nothing in this subsection shall  
15 be construed as affording any right to seek or participate  
16 in any judicial proceeding by any party not otherwise enti-  
17 tled to see<sup>2</sup> or participate in such proceeding.

18       “(e) CHANGE IN USE.—Any change in the scope,  
19 alignment, or character of use of a valid right-of-way es-  
20 tablished pursuant to Revised Statutes section 2477 shall  
21 be subject to terms and conditions required by section 505  
22 of this Act or other applicable law.

23       “(f) SAVINGS CLAUSE.—Nothing in this section shall  
24 be construed as increasing or diminishing the require-  
25 ments of any applicable law with respect to establishment.

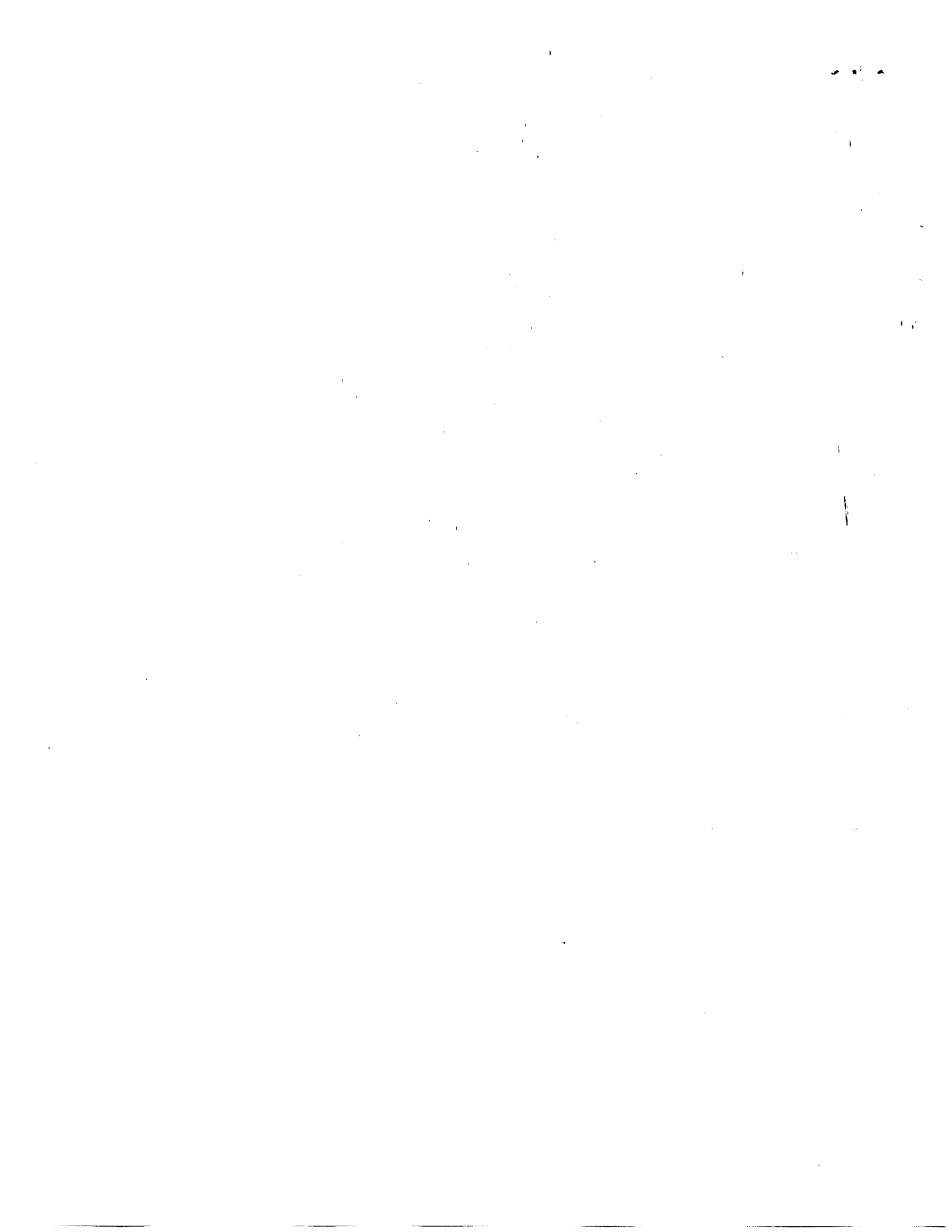
1 construction, or maintenance of a highway for purposes  
2 of obtaining a valid right-of-way pursuant to Revised Stat-  
3 utes section 2477 prior to its repeal.

4 "SEC. 320. RIGHT-OFF-WAY IN ALASKA CONSERVATION SYS-  
5 TEM UNITS.

6 "Nothing in this Act shall be construed as exempting  
7 any proposal for any construction on or change in the  
8 scope, alignment, or character or extent of use of any por-  
9 tion of any right-of-way claimed to have been established  
10 pursuant to Revised Statutes section 2477 on any lands  
11 within any conservation system unit in Alaska from the  
12 requirements of title XI of the Alaska National Interest  
13 Lands Conservation Act."

14 SEC. 16. WILD HORSE SANCTUARY REPORT.

15 (a) WAITING PERIOD.—The Secretary shall take no  
16 action to remove any animals covered by Public Law 92-  
17 195 (commonly known as the "Wild Free-Roaming Horses  
18 and Burros Act") from any area being operated, under  
19 an agreement with the Secretary, as a sanctuary for such  
20 animals on May 22, 1991, or to alter arrangements exist-  
21 ing on such date for care and maintenance of such ani-  
22 mals, sooner than 120 days after transmittal to the House  
23 Committee on Interior and Insular Affairs and the Senate  
24 Committee on Energy and Natural Resources of the report  
25 required by this section.





## OKLAHOMA

### STATUTES

OKLA. STAT. ANN. tit. 69, § 1201 (West 1969 & Supp. 1992) (enacted 1968, amended 1975; section lines public highways, width; former codifications in effect since 1909, § 6072, Wilson's Rev. & Ann. St. 1903 was incorporated in former OKLA. STAT. tit. 69, § 1 (1961), now § 1201)

OKLA. STAT. ANN. tit. 69, §§ 628, 629 (West 1969 & Supp. 1992) (power of county commissioners to open roads, width of roads, en. 1968, former codifications in effect since 1909)

Osage Alloting Act, ch. 3572, § 10, 34 Stat. 545 (1906)

OKLA. CONST. art. XVI, § 2 (1907) (acceptance of lands granted or reserved for highway)

Organic Act, ch. 182, § 23, 26 Stat. 92 (1890)

### CASES

Mills v. Glasscock, 110 P. 377 (Okla. 1910) (Constitutional and statutory provisions constituted an acceptance of congressional grant for highways; citing the Osage alloting act, ch. 3572, § 10, 34 Stat. 545 (1906), providing for public roads on all section lines in the Osage Indian Reservation; citing § 6072, Wilson's Rev. & Ann. St. 1903, declaring all section lines in the territory to be public highways; citing OKLA. CONST. art. XVI, § 2 (1907), accepting lands for public highways made under any grant of Congress)

St. Louis & S.F.R. Co. v. Love, 118 P. 259 (Okla. 1911) (citing § 7753, Compiled Stat. 1909, vesting jurisdiction in the township boards to open and establish public roads)

Sebranak v. Board of County Comm'rs of Garfield County, 27 P.2d 632 (Okla. 1933) (citing ch. 72, Stat of Okla. 1893 (§ 5708 et. seq.), declaring all section lines in the territory of Oklahoma to be public highways and authorizing the board of county commissioners to lay out, alter, or vacate any road)