

MEMORANDUM OF UNDERSTANDING
Between
The State of Utah
and
The Department of the Interior
On State and County Road¹ Acknowledgment

This Memorandum of Understanding (MOU) is entered into between the U.S. Department of the Interior and the State of Utah on this 9th day of April 2003.

WHEREAS,

1. In a Report to Congress prepared in June of 1993, the Department of the Interior explained that unresolved conflicts over the status of rights-of-way created pursuant to Revised Statute 2477 were creating "a continuing cloud on Federal agencies' ability to manage federal lands."
2. On August 7, 2002, a bipartisan group of eight western governors wrote urging the Department of the Interior to "bring finality" to R.S. 2477 disputes "in a cooperative manner."
3. On July 16, 2002, the National Association of Counties adopted a resolution urging the Department of the Interior to adopt a policy approach to R.S. 2477 rights-of-way that would allow counties to "maintain historical rights of way across federally managed lands."
4. Disputes involving R.S. 2477 rights-of-way have generated numerous expensive and inconclusive federal court lawsuits that have left numerous questions concerning the ownership status of R.S. 2477 rights-of-way unresolved; and the high cost of this litigation has made it difficult for states and counties to assert their rights and for conservation groups to assert their interests.
5. The Department of the Interior has traditionally approached R.S. 2477 issues by trying to define the precise legal limits of the original statutory grant.
6. Most of the asserted R.S. 2477 rights-of-way that actually have been part of western states' inventoried and maintained transportation infrastructure since before the enactment of the Federal Land Policy and Management Act (FLPMA) in 1976 satisfy the statutory requirements of "construction" and "highway" under almost any interpretation of those statutory terms.

¹ For purposes of this MOU, the terms "road" and "highway" shall be deemed synonymous.

7. The State of Utah has many R.S. 2477 claims, and on June 14, 2000, sent to the Secretary of the Interior a Notice of Intention to File Suit under 28 U.S.C. § 2409a(m) to quiet the title to those claims.
8. The roads in which the State of Utah and Utah counties assert claims include many roads of continuing importance to rural transportation.
9. Rights-of-way granted under R.S. 2477 are vested property rights that cannot be eliminated or diminished without due process. However, the statutory grant of the rights-of-way did not require the issuance of an identifying record, such as a patent. The resulting uncertainty surrounding the identity and scope of R.S. 2477 rights-of-way has created unnecessary difficulties in federal, state and local transportation and land use planning decisions.
10. The State of Utah and Utah counties have spent considerable time and substantial resources to gather information about road claims and are prepared, if necessary, to litigate those claims.
11. Federal, state and local land managers and environmental advocacy organizations have all demonstrated a desire to put disputes surrounding R.S. 2477 to rest and move toward an approach to land management that emphasizes cooperation.

NOW, THEREFORE, THE PARTIES STIPULATE AND AGREE AS FOLLOWS:

1. The Department shall implement a State and County Road Acknowledgment Process (Acknowledgment Process) to acknowledge the existence of certain R.S. 2477 rights-of-way on Bureau of Land Management land within the State of Utah, as further described in, and subject to the terms and conditions of, this MOU.
2. For purposes of the Acknowledgment Process only, neither the State nor any Utah county shall assert a right-of-way for any:
 - a. roads that lie within Congressionally designated Wilderness Areas or Wilderness Study Areas designated on or before October 21, 1993, under Section 603 of FLPMA; and
 - b. roads that lie within the boundaries of any unit of the National Park System; and
 - c. roads that lie within the boundaries of any unit of the National Wildlife Refuge System; and

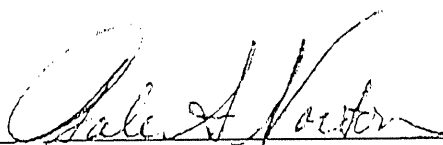
- d. roads that are administered by a federal agency other than the Department of the Interior, unless that federal agency consents to the inclusion of the road in the Acknowledgment Process.
3. The State of Utah, or any Utah county, shall submit a request to initiate the Acknowledgment Process for a candidate road and shall reimburse the Bureau of Land Management for the reasonable and necessary cost of processing each request. Each eligible road submitted shall have the following characteristics:
- a. the road existed prior to the enactment of FLPMA in 1976 and is in use at the present time;
- b. the road can be identified by centerline description or other appropriate legal description;
- c. the existence of the road prior to the enactment of FLPMA is documented by information sufficient to support a conclusion that the road meets the legal requirements of a right-of-way granted under R.S. 2477; this information may include, but is not limited to, photographs, affidavits, surveys, government records concerning the road, information concerning or information reasonably inferred from the road's current conditions; and
- d. the road was and continues to be public and capable of accommodating automobiles or trucks with four wheels and has been the subject of some type of periodic maintenance.
4. The Acknowledgment Process referenced in this MOU that the Department shall use to acknowledge eligible roads is FLPMA's recordable disclaimer of interest process. See 43 U.S.C. 1745; 43 C.F.R. subpart 1864. The recordable disclaimer of interest process provides a clear statutory basis for resolving claims and provides an opportunity for public notice and participation. The Utah State Director of the Bureau of Land Management will issue a recordable disclaimer of interest if the requirements of the applicable statutes and regulations, and the terms of this MOU, have been satisfied.
5. By signing this agreement, the Department recognizes that road width and ongoing maintenance levels are essential aspects of road management. Therefore, the scope of a road that the Department disclaims should include a sufficient width to allow the State or county to maintain the character, usage, and travel safety of the road existing at the date of this MOU. For purposes of the Acknowledgment Process only, the width of the road asserted and the width of the road disclaimed shall not exceed the width of ground disturbance that currently exists for the road at the date of this MOU.
6. After the Department issues a recordable disclaimer of interest for an acknowledged road, the State or a county may want to increase the road's width beyond the already disclaimed right-of-way, or to improve the road in a way that substantially alters its

character (such as by paving a previously unpaved surface). But the recordable disclaimer of interest process will not be used as a mechanism to substantially alter the characteristics of a road. In cases where the State or a county wishes to substantially alter a road that is subject to the Acknowledgment Process in a way that is outside the scope of ordinary maintenance, it will do so only after notifying BLM of its intentions and giving BLM an opportunity to determine that no permit or other authorization is required under federal law; or, if a permit or other authorization is required, securing such a permit or other authorization, issued in compliance with any applicable law, including requirements of Title V of FLPMA and the National Environmental Policy Act. In the event a permit is deemed necessary, the Department will make its best effort to process requests for access under Title V of FLPMA promptly and cooperatively.

7. In order to facilitate the Acknowledgment Process in Utah, the Department hereby declares that the requirements for determinations under the "Interim Departmental Policy on Revised Statute 2477 Grant of Right-of-Way for Public Highways; Revocation of December 7, 1988 Policy," dated January 22, 1997, shall be inapplicable to acknowledgment requests submitted in accordance with this MOU. While the 1997 Interim Policy shall still apply to all other requests for right-of-way acknowledgment that are not submitted pursuant to this MOU, the Department recognizes that other interested states and counties may wish to submit proposed MOU's for consideration by the Department that are generally consistent with the principles set out in this agreement.
8. The State, Utah counties and the Department shall work cooperatively to minimize trespass situations on roads that are outside the scope of this MOU.
9. It is understood that the State and counties have evidence regarding the existence of many roads, including those in which they assert no ownership interest. They may choose to use this evidence for other purposes, such as to illustrate whether the land through which the roads run have wilderness-like characteristics or resource values. The Acknowledgment Process will take place independently and without prejudice to any other use of this evidence or other valid existing rights, if any.
10. After submitting a road to the Acknowledgment Process, the State or a county may withdraw it from consideration at any time prior to the actual recording of the disclaimer issued by the Department, for any reason, without prejudice. The submission of a road to the Acknowledgment Process does not prejudice the State's or a county's valid existing rights regarding that road under the law.
11. The Department shall execute any implementing agreements with the State of Utah or Economy Act agreements as appropriate with other federal agencies, as required by applicable statutes and regulations, when effectuating the purposes of this MOU.
12. Activities under this MOU and any implementing agreements shall be conducted in accordance with mutually-agreed upon plans for the classification of information by the

State, for the review and release of information, and for cooperation in the preparation of any and all reports to Congress. The release of any information by the Department under this MOU will be in accordance with applicable statutes and regulations.

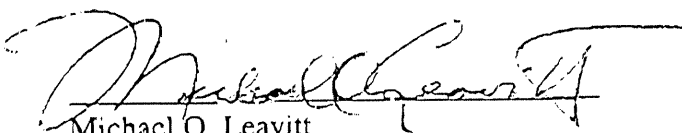
- 13. Any expenditure of appropriated funds by the Department will be developed in specific agreements authorized by applicable statutes and regulations and is subject to the availability of funds. This MOU shall not be used to obligate or commit funds or as the basis for the transfer of funds.
- 14. This MOU shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the State of Utah, Utah counties, the United States, its agencies, its officers, or any other person. This MOU shall not be construed to create any right to judicial review involving the compliance or noncompliance of the State of Utah, Utah counties, the United States, its agencies, its officers, or any other person with the provisions of this MOU.



Gale A. Norton
Secretary
United States Department of the Interior

April 9, 2003

Date



Michael O. Leavitt
Governor
State of Utah

April 9, 2003

Date