



# HIGHWAY ROBBERY

*How a Loophole in an  
Outdated and Repealed  
Road Statute Threatens  
Our National Parks,  
Monuments, and Other  
Special Places—  
One Mile at a Time*

Absurd but true: In some of our finest Western wildlife refuges, wilderness, and parks (like Alaska's Denali National Park, above) hiking trails are being claimed as "highways" by local governments and special interests, under a now-repealed, ancient mining statute that was signed into law nearly 140 years ago.



# A MONUMENTAL THREAT

*RS 2477 may seem obscure and arcane, but it is a serious, emerging threat to our Western public lands. If we don't shut down this loophole now, natural treasures that were meant to be protected for our children will be damaged permanently.*

**—Don Barry, former Interior Department Assistant Secretary for Fish & Wildlife & Parks**



GORDON SWENSON

Absurd RS 2477 claim in the San Rafael Swell, Utah (left).  
Dinosaur National Monument, Colorado (above).



NATIONAL PARK SERVICE

# TO OUR NATURAL TREASURES

Proposed RS 2477 routes threaten to permanently scar some of our last wild places, both visually and ecologically. The largest land giveaways could occur in Utah, Alaska, and California, states where thousands of miles of roads could be scraped across fragile parkland and wilderness-quality lands.

In Utah, state officials have asserted more than 10,000 right-of-way claims under RS 2477 and off-road-vehicle groups have mapped what seems like every jeep trail and desert stream bed and successfully urged counties to adopt their findings as “roads” on county maps. Southern Utah counties now claim they have valid existing rights-of-way under the repealed law that entitle them to lay claim to phantom trails, and they are targeting national parks (including Canyonlands and Zion) and lands proposed by Congress for wilderness protection. These wilderness foes will argue that these rough, unmaintained “roads” disqualify surrounding public lands for wilderness protection.

Under an extremely broad Alaska Supreme Court interpretation, Alaska could claim that every section line in the state qualifies as an RS 2477 highway. This would crisscross the state with rights-of-way claims like the grid of a waffle iron. The state may also use the disclaimer rule to assert as many as

2,000 additional highway routes and ownership of 22,000 rivers, lakes, and streams in Alaska, threatening millions of acres of national parks and wildlife refuges.

In California, an aggressive effort by San Bernardino County to survey specific routes and map claims—including wagon roads, trails, and horse and footpaths—has resulted in 2,567 miles of road claims in the Mojave National Preserve and another 2,419 miles elsewhere in the California desert. And the county is only 80 percent of the way through its survey.



Some of this country’s most irreplaceable national treasures in Colorado would fare no better under RS 2477. In Moffat County, county commissioners have claimed broad rights-of-way across Browns Park

National Wildlife Refuge, more than 300,000 acres of public land managed as wilderness, and across Dinosaur National Monument, which contains fragile deposits of dinosaur bones, rock art, and habitat for imperiled fish and birds.



GORDON SWENSON

RS 2477 claim in Grand Staircase-Escalante National Monument, UT.

The State of Alaska has identified 24 routes (shown in red ) in Denali National Park and Preserve  that it contends may be valid state rights-of-way under RS 2477. Most of these claims, which cover approximately 350 miles, are on lands suitable for wilderness designation. Some cut across grizzly bear and moose habitat, wolf pack territories, and highly sensitive caribou calving and wintering grounds.



*[The impact of RS 2477 claims] could be devastating...[They] could cross many miles of undisturbed fish and wildlife habitat, historical and archeological resources, and sensitive wildlands... [They] would undoubtedly derogate most unit values and seriously impact the ability of the NPS to manage the units for the purposes for which they were established.*

**—National Park Service, 1995 memo**



## BACKGROUND ON RS 2477: AN OPPORTUNISTIC PUBLIC LANDS GRAB

The outdated Revised Statute 2477 states simply, “The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted.” In 1866, this statute was passed in part to permit highway construction to help commerce move from town to town over federally owned lands. In 1976, the Federal Land Policy and Management Act (FLPMA) repealed the obsolete statute, but did not invalidate claims that could be shown to be established and valid prior to 1976.

In the 1980s, as federal land management agencies inventoried roadless lands to see if they qualified for wilderness protection, development and off-road advocates and anti-federal government extremists mobilized in opposition. County and state officials resurrected the old RS 2477 statute, arguing that it gave them unrestricted access to Western national parks, national forests, national wildlife

refuges, national monuments, and wilderness areas.

For an RS 2477 claim to be granted, those pressing the claim must show that a “highway” was “constructed” across U.S.-owned land either before the land was set aside for other uses or before 1976 (when the law was repealed). Unfortunately, in 1988, the Interior Department (under Jim Watt’s successor Secretary Donald Hodel) issued guidance that was intended to unleash a flood of bogus claims over federal lands, and it worked. Subsequent attempts by Secretary Bruce Babbitt to develop more balanced validity regulations were blocked by pro-development forces in Congress. As of January 2003, a policy put in place by former Secretary Babbitt in response to congressional action prevents the Interior Department from awarding most claims, but Secretary Norton announced that this policy would likely be reversed in early 2003.

*The administration’s  
[RS 2477] rule is  
shockingly short-sighted.  
The conservation legacy  
bequeathed to our  
generation by President  
Theodore Roosevelt and  
other visionary leaders is  
being squandered in short  
order.*

**—Editorial, San Francisco  
Chronicle, January 10, 2003**

CHARLIE OTT

Denali National Park across Wonder  
Lake, Alaska

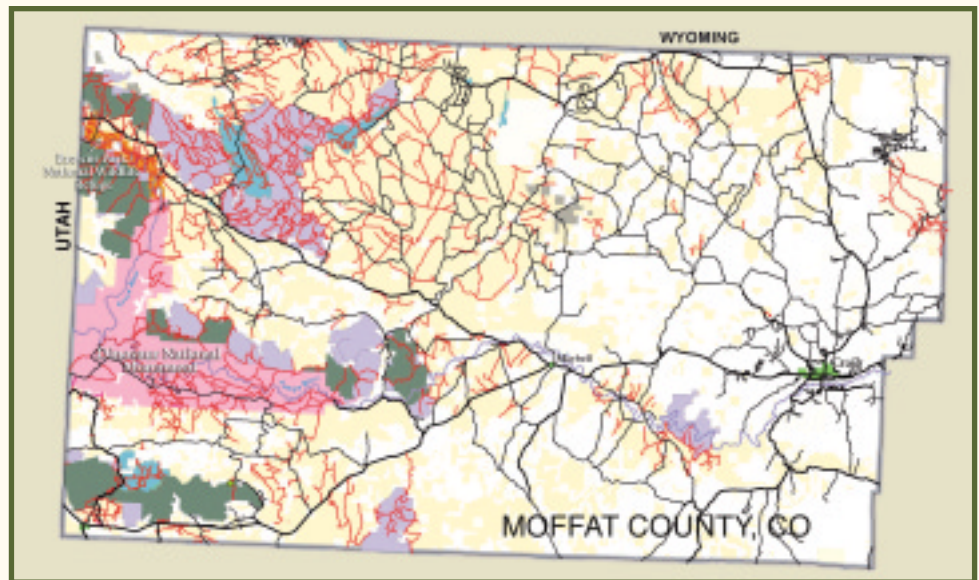
## THE “DISCLAIMER” RULE UPS THE ANTE





Picking up where Secretary Hodel left off, the current administration is pushing hard to ease the approval process for phantom RS 2477 claims. On January 6, 2003, Interior Secretary Norton issued new “disclaimer regulations” to try to make it easier for the Federal government to grant bogus RS 2477 claims.

The Interior Department has said now, for the first time, that the disclaimer process can be used by states, counties, and even individuals to obtain rights-of-way under the repealed RS 2477 law. The states of Alaska and Utah, as well as anti-conservation counties, have tens of thousands of unsupported right-of-way claims that they are ready to put forward.

The new rule allows states, counties, and local governments to obtain such disclaimers, even when they aren’t recorded as owners of any land at issue. The new rule also permits states and local governments to ignore a statute-of-limitations requirement that applies to all other property owners. In addition, the new rule puts the Bureau of Land Management in charge of approving RS 2477 claims on land

within national parks and wildlife refuges, even over the objections of the National Park Service or U.S. Fish and Wildlife Service. Equally troubling is that the rule was put into effect before the U.S. Department of the Interior published the standards that it will use to judge the validity of these claims and refused the American public the opportunity to comment on those standards before they were finalized.



Colorado’s Moffat County has claimed hundreds of new rights-of-way (shown in red ) , including many in proposed wilderness areas (shaded purple ) , Browns Park National Wildlife Refuge (shaded orange ) , and Dinosaur National Monument (shaded pink ) , which protects deposits of fossilized dinosaur bones and prehistoric rock art.

## ROBBING FUTURE GENERATIONS BY PAVING OUR PARKS AND WILDERNESS

**Z**ion. Denali. Mojave. Dinosaur. Canyonlands. Grand Staircase-Escalante. The Arctic Refuge. These are some of America's most beloved national parks and public lands. They share rare wildlife, clear waters, and awe-inspiring majesty.

They share something else, too. They are all in the cross hairs of a plan to authorize counties and states to bulldoze and pave thousands of miles of new roads, and to open these lands to development and off-road vehicle interests. The tool of choice to damage and degrade our national treasures is a loophole in an obscure, repealed, Civil War-era law that could allow industry and their political allies to argue that long-forgotten or little-used foot and animal tracks, or illegal off-road vehicle ruts, are "constructed highways" that state and local governments can control.

Across the West, state and local governments are getting ready to file thousands of unsubstantiated claims for federal rights-of-way under the provisions of an 1866 mining law known as RS (Revised Statute) 2477. Repealed by Congress in 1976, this law was originally intended to serve the narrow goal of granting the right to construct and use highways across public lands that were not otherwise reserved or set aside for other public uses (such as to protect water supplies, forests, wildlife, or scenic beauty). Instead, it is now viewed as a loophole to allow the bulldozing of a spiderweb of roads across some of our most scenic and valued national parks and refuges.



The great majority of these phantom-road claims are illegitimate assertions meant to undermine federal protected areas, thwart wilderness protection (because the presence of a road generally disqualifies an area for wilderness designation), and serve special interests, such as mining, timber, and oil and gas industries, and off-road-vehicle users. Some counties are asserting RS 2477

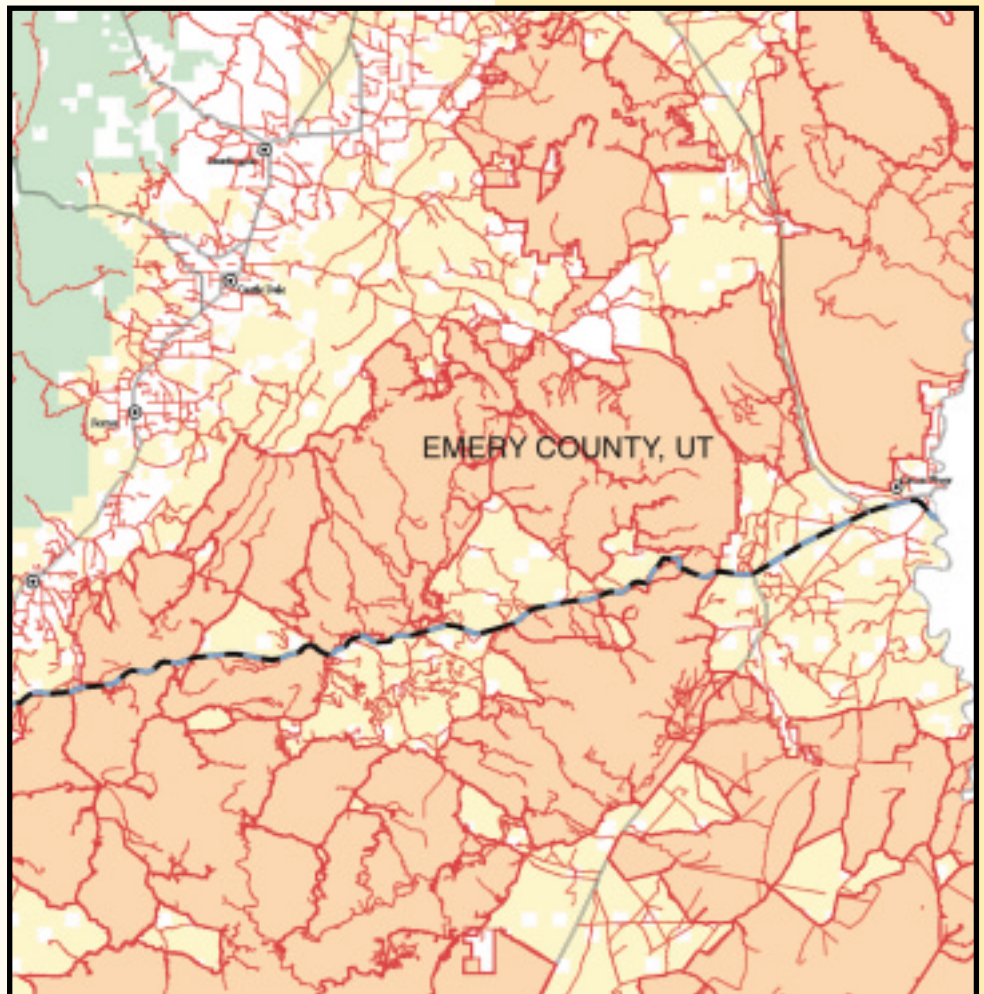
road-building rights-of-way claims for cow paths, horse trails, riverbeds, off-road vehicle routes, and for overgrown trails that have not been maintained or driven on for decades, if ever.

Although many of these claims are obviously bogus, the threats are all too real. The unmanaged and unnecessary creation of new roads in pristine areas would degrade water quality, destroy and fragment wildlife habitat, increase the risk of vandalism to archeological sites, encourage the destructive use of off-road vehicles outside of designated-use areas, increase erosion, destroy the peace and quiet of wild areas, and undermine conservation efforts for lands that are meant to be preserved for future generations. This long-outdated statute would allow special interests to bulldoze highways, utility corridors, and pipelines into our most precious parks and refuges and threatens to have a lasting and devastating impact on America's Western public lands.

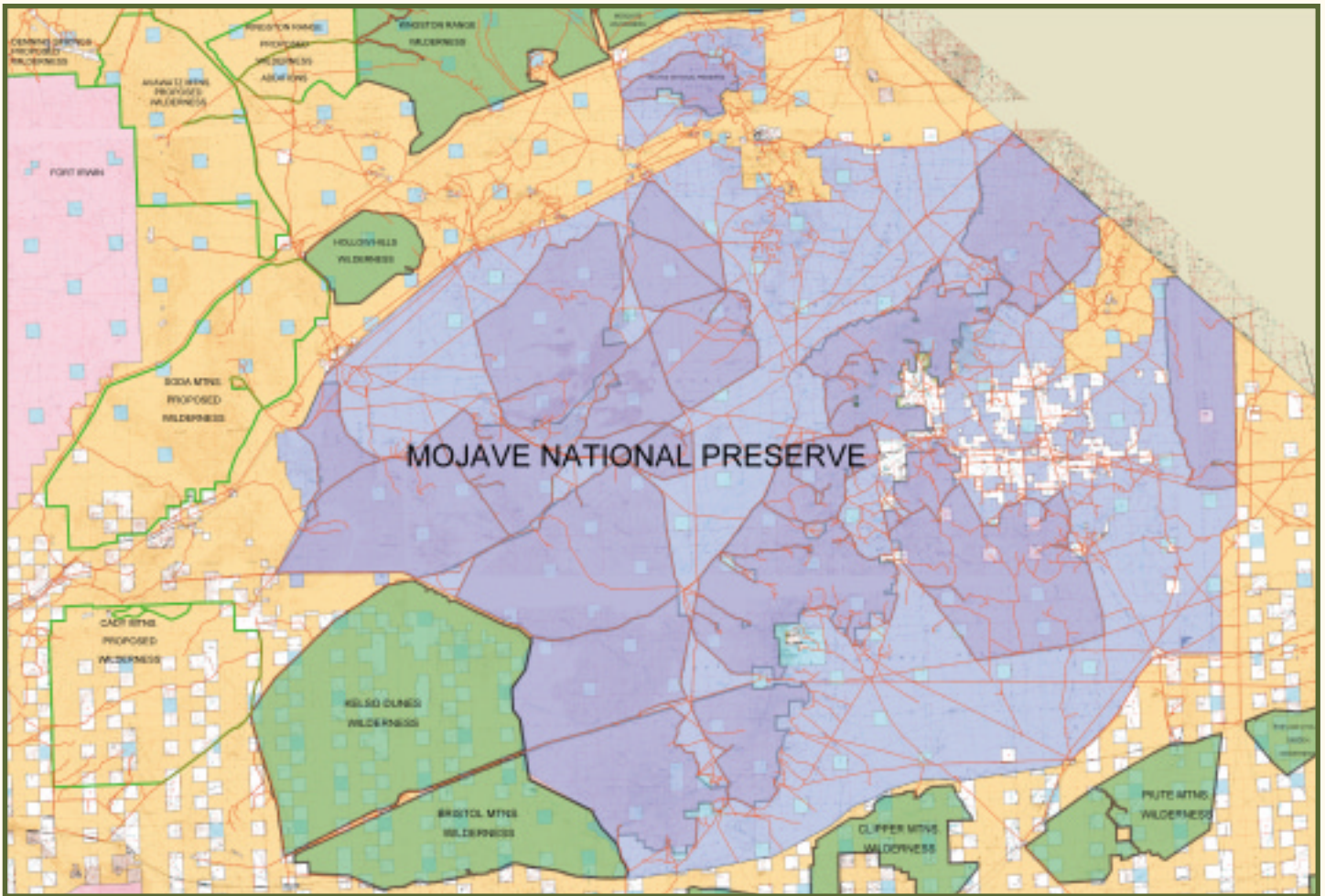
*Untallied thousands of miles of long-abandoned wagon roads, cattle paths, Jeep trails and miners' routes potentially could be transformed into roads...Many crisscross national parks, wildlife refuges and wilderness areas.*


**—Editorial, Seattle Post-Intelligencer, January 1, 2003**

Emery County, Utah, has claimed thousands of miles of new RS 2477 routes (in red on map ) in the national-park-quality lands of the San Rafael Swell. These "phantom highways" would slice and dice the spectacular landscapes and canyons proposed for protection in America's Redrock Wilderness Act (as represented by the shaded areas of the map ).







California's San Bernardino County has claimed more than 2,500 miles of routes (shown in red ) in the Mojave National Preserve, home to colored sand dunes, mile-high mountains, bighorn sheep, and the endangered desert tortoise. The remaining surveying process has been postponed until the county can collaborate with local special-interest groups.

**FOR MORE INFORMATION ABOUT RS 2477 OR EFFORTS TO OPPOSE THIS ANTIQUATED PUBLIC AND PRIVATE LANDS GIVEAWAY, CONTACT:**

Alaska Coalition, 907-586-6667  
 Alaska Wilderness League, 202-544-5205  
 California Wilderness Coalition, 530-758-0380  
 Californians for Western Wilderness, 415-752-3911  
 Campaign for America's Wilderness, 202-544-3691.  
 Earthjustice, 303-623-9466 (Denver); 907-586-2751 (Alaska)  
 National Parks Conservation Association, 202-223-6722.  
 Natural Resources Defense Council, 415-777-0220  
 Sierra Club, 202-547-1141  
 Southern Utah Wilderness Alliance, 801-486-3161  
 Trustees for Alaska, 907-276-4244.  
 The Wilderness Society, 202-833-2300 (DC); 303-650-5818  
 (Four Corners); 907-272-9453 (Alaska)



Denali National Park, Alaska

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*By ceding such [RS 2477] claims...the Bush administration is doing the bidding of industry backers—but is squandering the birthright of all Americans.*

**—Editorial, The Boston Globe, July 15, 2002**