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

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The Honorable Don Davis  
Chair, Public Lands Steering Committee  
Colorado Counties, Inc.  
800 Grant Street, Suite 500  
Denver, CO 80203

Dear Commissioner Davis:

Thank you for providing me with CCI's revised policy regarding RS 2477 road claims. I appreciate the amount of work that went into this policy and appreciated the chance to personally discuss my views on this issue with the subcommittee members at one the subcommittee meetings.

As you know, I have introduced a bill (H.R. 1639) that would establish a process to confirm the validity of RS 2477 roads and help end the controversies surrounding claims throughout the west. Although the Federal Land Policy and Management Act of 1976 (FLPMA) ended the creation of any new RS 2477 roads, possible claims for preexisting rights have created controversies for decades. My bill would not only help remove any cloud of legitimacy surrounding established RS 2477 roads, it would also end further confusion surrounding the claimed existence of such roads that may not be legitimate so that we can get on with addressing other serious land management issues.

This CCI policy will help us address this issue and move forward with a possible resolution. I wanted to take this opportunity to note that CCI's policy is consistent with the provisions of H.R. 1639. Enclosed is a point-by-point comparison which shows how close these policies are aligned.

I hope that CCI will remain interested and involved with this issue. I look forward to continue working with you on this and ultimately see a resolution that makes sense and helps put to rest this long-standing controversy.

Sincerely,

Mark Udall

Enclosure

## Comparison of CCI's RS 2477 Policy and H.R. 1639

*(CCI's policy is in regular type; the comparison with H.R. 1639 is in italicized brackets after each CCI policy point)*

### I. Roles for Recognizing RS 2477 Right-of-ways

1) Federal legislation and/or administrative policy is needed to address RS 2477 right-of-ways (ROWs) to establish a federal standard that is uniform among all federal land managing agencies.

*[This is obviously consistent with H.R. 1639 with regard to "federal legislation." The bill also calls for an "administrative process." However, if by "administrative policy" CCI is referring to some consistent federal agency rules that would be developed under the Administrative Procedures Act, that would be prohibited by a law passed by Congress in 1997 barring the Interior Department from promulgating such rules unless and until Congress approves such rules.]*

2) State law should be applied to determine the existence and scope of RS 2477 ROWs to the extent consistent with federal law.

*[This is consistent with H.R. 1639—the bill contains the following provision (this is from Section 5 of the bill): In determining the validity of an RS 2477 claim, the hearing officer "shall apply Federal law and the law of the State in which the claimed right-of-way is located, and which was in effect on the latest available date, to the extent that such State law is consistent with Federal law."]*

3) The county role is to hold public hearings. The county may initiate the process for assertion, vacation, use and maintenance. Counties should have standing on RS 2477 ROWs claims.

*[This is consistent with H.R. 1639 as the bill does not prohibit this role for the Counties.]*

4) The public should have a role in documenting ROWs. The public's role may differ depending on whether or not an RS 2477 ROW is being claimed on currently reserved or unreserved lands.

*[This is not inconsistent with H.R. 1639—the bill allows for ample public comment on the processing of any RS 2477 claim. The bill also creates a different standard for considering claims across these special lands, although the bill does not limit public involvement in situations involving claims across reserved or unreserved lands (such as parks, wildlife refuges, wilderness areas, etc.).]*

5) The asserting party is responsible for the burden of proof.

*[This is what H.R. 1639 requires as well.]*

## II. Process: Nuts and Bolts

1) There may be different processes related to currently reserved, unreserved, and private lands because of the different issues involved. Consideration and resolution on unreserved lands may and should take priority over currently reserved lands. Given the importance and value of special areas of public land, including national parks, wilderness, national wildlife refuges and roadless areas, a higher standard of proof should be required for these areas.

*[H.R. 1639 requires a higher burden of proof for asserting claims across reserved lands—so the bill is consistent with the first sentence of this point. However, H.R. 1639 does not provide a "priority" processing of claims over reserved or unreserved land—but the bill also does not prohibit such a priority. It all depends on which claims are filed first; if the counties file claims on unreserved lands first, they will get processed first under our bill.]*

2) Concerning documentation of RS 2477 ROWs claims, the federal process should *not* include a surveying requirement, but should allow for any evidence tending to establish the existence and location of an RS 2477 ROW. RS 2477 ROWs that have been adjudicated need to be recognized.

*[This is consistent with H.R. 1639—the bill requires that the claim be surveyed, but only after the claim has been proven and adjudicated as a legitimate RS 2477 road. Such a survey is not required in order to make or assert the claim in the process established by the bill.]*

3) There shall be no application fee for local governments but there may be fees for private parties.

*[This is consistent with H.R. 1639—the bill does not require a fee to process the claim under the procedures established under the bill.]*

4) Any entity or individual may assert a claim.

*[This is consistent with H.R. 1639 as it allows anyone to assert a claim.]*

5) Any deadlines established for asserting claims at the county level should not place an undue burden on the county. The process should be handled in a defined, expedited manner at the lowest administrative level possible. The federal government should act in a reasonable time to file claims. If the federal process includes deadlines, different deadlines should be established for: 1) identifying potential RS 2477 ROWs, 2) asserting claims and 3) allowing the appropriate federal agency to rule on the claim.

*[This is not inconsistent with H.R. 1639—the bill provides that claims must be filed within four years after the bill becomes law, which provides for an expedited and defined process. However, the bill does not establish different deadlines—other than requiring that claims be filed within four years of enactment.]*

6) Appeals process should be available.

*[This is consistent with H.R. 1639 as it provides for both an administrative appeal of a "hearing officer's" decision and a right to appeal the decision in a court.]*

7) Definitions should reference state law to the extent consistent with federal law.

*[As noted above, H.R. 1639 requires the hearing officer and a judge to consider state law definitions as part of the process of adjudicating claims—so this provision is consistent with H.R. 1639.]*