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Congress of the United States
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June 3, 2003

The Honorable Bill Owens
Governor
State of Colorado
136 State Capitol
Denver, CO 80303

Dear Governor Owens:

From press accounts and a recent letter from Colorado's Natural Resources Director to Secretary Gale Norton, I understand your Administration seeks to develop a "memorandum of understanding" (MOU) with the Department of the Interior regarding potential assertions that the state or various counties are entitled to rights-of-way over federal public lands (the so-called RS 2477 issue). This clearly is a result of a similar MOU between Interior and the State of Utah.

I agree that we need to finally resolve this issue. However, I have very serious concerns with the approach your Administration seems to be proposing.

To begin with, I think this issue is too important to be handled without adequate opportunity for public review and comment. The residents of a county are entitled to know what rights may be asserted, the people of Colorado are entitled to know how their state government is proposing to deal with this matter, and the American people are entitled to know how their lands may be affected.

In addition, I have the following concerns:

Many western states — not just Colorado and Utah — are in a position to assert entitlement to RS 2477 rights-of-way. Addressing the issues in a piecemeal fashion with state-by-state agreements will create confusion, delays and increased costs to the taxpayers. In addition, there is a great likelihood that each state agreement will have slight differences from other states (which is underscored by the differences Mr. Walcher proposes for the Colorado MOU from the Utah MOU). I believe that it would be better to establish consistent rules and procedures regarding the resolution of these issues, which is why I have introduced legislation on this topic (H.R. 1639, the "R.S. 2477 Rights-of-Way Act of 2003") intended to provide a fair, balanced, and, most importantly, consistent method for handling such assertions. I would appreciate your support for this legislation.

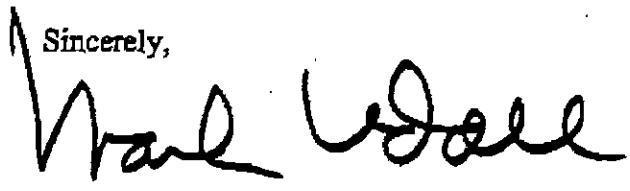


I also find it very troubling that Mr. Walcher is proposing that the Colorado MOU include asserted rights-of-way that would cut through wilderness and wilderness study areas, national parks, national wildlife refuges and other special lands. I recognize that legally, such assertions may be made. However, any agreement between Interior and the state or its subdivisions for expedited handling of claims should recognize that establishing roads through these areas would have serious implications for their wildlife, habitat and other environmental values, as well as potentially serious implications for tourism. The State of Utah recognized that such lands were set aside for special purposes that could be severely compromised by highway rights-of-way, and accordingly omitted at least some such areas from its MOU. I think it would be a serious mistake for your Administration to be seen as having any less regard for the most sensitive parts of the federal lands located in our state.

Finally, I think there are some serious legal implications related to this issue. As I assume you know, current federal law prohibits the Secretary of the Interior from adopting final rules and regulations pertaining to assertions of RS 2477 rights-of-way without new Congressional authorization. I believe that the Bush Administration is seeking to circumvent this law by adopting new regulations and by entering the MOU with Utah that specifically indicates these new regulations will be applied to RS2477 claims in that state. So, in my view, by concluding a similar MOU Colorado would be entering into an arrangement of seriously questionable legal status. This could also lead to additional costs and expenses for the state and federal taxpayers regarding the legality of the MOU and any actions taken under it. I strongly urge you to avoid such an unnecessary and undesirable waste of the state's and the nation's resources.

I again urge you to consider the legislation I have proposed to address this situation on a national basis. The bill I have introduced would reduce controversies of the kind I've described and would provide for a fair and expedited resolution of RS 2477 claims. I believe that it makes better sense and would urge you to support it as a reasonable solution to this long-standing issue. A copy of my bill is enclosed.

Thank you for your consideration.

Sincerely,


Mark Udall

cc: The Honorable Gale Norton, Secretary of the Interior
 Mr. Greg Walcher, Executive Director, Colorado Department of Natural Resources