

Grand Junction Sentinel

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Congress must address rights-of-way dispute

Earlier this month, it was revealed that an attorney for Moffat County has cited a Civil War era law known as RS-2477 in the county's fight to get landowners in a rural area to allow access across their land to another piece of private property.

The news was troubling for people who have watched the roads right-of-way issue develop in the past decade.

First, Moffat County has already mapped some 2,000 miles of potential RS-2477 road claims within its boundaries - including everything from old livestock trails to ancient footpaths. Its claimed rights of way would criss-cross such federally protected lands as Dinosaur National Monument, Browns Park National Wildlife Refuge and a proposed BLM wilderness area.

Until now, Moffat County has avoided using the law to assert claims over private property. But in other parts of the state, most notably Boulder County, some groups have argued that RS-2477 gives them rights to use long-abandoned roads or trails across private property.

RS-2477 was passed in 1866 to encourage development in the West. It grants "the right of way for the construction of highways across public lands not otherwise reserved for public purposes."

In 1976, Congress repealed the law, but said that RS-2477 rights of way that existed prior to that time were valid. Unfortunately, in the ensuing 29 years, Congress has done nothing to explain how those pre-1976 claims are to be evaluated, what constitutes a highway under the old rules, who can assert a claim and how its validity is determined.

And, while the courts have so far ruled that the federal government has no authority to actually grant RS-2477 claims until Congress acts, Interior Secretary Gale Norton has offered guidelines to Utah officials on how counties there could begin asserting claims.

Colorado's 2nd District Rep. Mark Udall has twice introduced measures aimed at clearing up the RS-2477 mess. A spokesman for Udall said similar legislation will be a high priority this year.

A 140-year-old law that was ignored for decades should not become a 21st century means to turn old cow trails into public passageways across national monuments, wildlife refuges or wilderness areas. Nor should it be used to cloud titles and open access to private lands.

Because of the combined issues of protecting federal and private lands, clearing up RS-2477 is anything but a one-party issue. Republicans in the Colorado Senate passed a resolution in favor of Congressional action last year. So did Colorado Counties Inc. In fact, CCI met just last Friday and authorized a subcommittee to work with Udall's office as he prepares new legislation.

But Udall can't accomplish this alone. It will take considerable assistance from the likes of 3rd District Rep. John Salazar and senators like Wayne Allard and Ken Salazar to get the needed legislation passed.