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OLD ROAD CLAIMS THREATEN PUBLIC LANDS

There'll be no reopening of old roads in national parks, wildlife refuges or wilderness areas. Not if the Senate approves a proposal by Rep. Mark Udall that passed the House the other day. Those are protected lands, valued precisely because of their near-roadless quality. The Senate ought to find it just as easy as the House to rein in the Interior Department's desire to turn over rights of way to the states and counties.

But this is only a minor skirmish in the larger war over rights of way on public lands. The judicial and bureaucratic battles that have plagued the West for more than two decades will likely rage on until the Congress provides a clear set of guidelines for how such claims should be resolved.

Udall has in fact also proposed a bill that would create such a process and a series of deadlines for anyone claiming a public road under the defunct federal law known as Revised Statute **2477**. Even if his bill doesn't pass in its entirety, it could still be the foundation of a compromise as the battle over road claims heats up again.

Passed in 1866, R.S. **2477** provided rights of way across public lands for all sorts of byways - from highways and footpaths to wagon trails and cattle crossings. It was finally repealed in 1976, but Congress stipulated that roads established prior to that year could still qualify as public rights of way under the statute.

Congress also reserved for itself the sole power to enact regulations pertaining to those rights. But instead of proposing new legislation, Interior Secretary Gale Norton has sought to cut deals with individual states. In April, for example, she announced an agreement with Utah to "disclaim" federal interest in roads crossing public lands that the state wanted to access under the 1866 law. The deal exempted protected areas, but it nonetheless opened the floodgates to hundreds of claims, and accelerated a wave of road-building expectations in many other states.

As Udall points out, courts weighing disputed claims invariably wrestle with such issues as defining the words "constructed" and "highway." For the most liberal interpreters, creek bottoms, dirt paths and even rock ledge trails could meet the definition of a "public road."

The statute is no arcane point of property law for ranchers like Jana and Ron Smith of Kanab, Utah, who told us they were forced to file a lawsuit to fight off Kane County's old-road claim in a bid to stop hunters, recreational-vehicle users and county roadgraders from stampeding across their lands. It took a year, but a court finally awarded them the rights and title to property they knew was theirs in the first place. There's every reason to expect more such cases in which property rights are violated.

Unfortunately, this debate has brought out the worst in Udall's environmentalist supporters, whose attacks on Greg Walcher, the director of the Colorado Department of Natural Resources, have been particularly unfair. They accused Walcher of trying to cut a secret deal with Norton on old rights of way. But it's clear from his May 15 letter to Norton that his biggest concern was the lack of a public process to resolve Colorado's old-road claims.

That's a legitimate complaint. Udall obviously believes it's a problem, too - which is why he rightly expects Congress to act

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