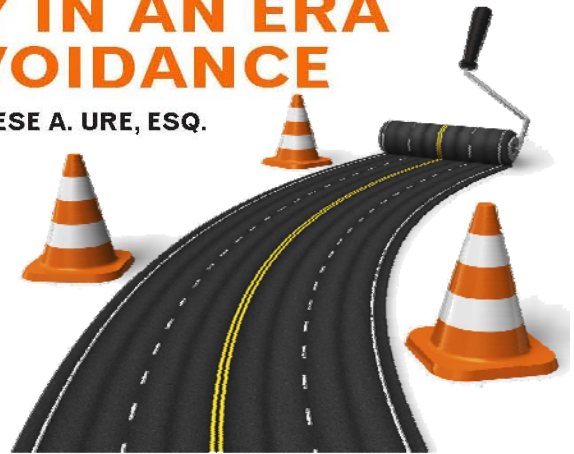


RS 2477:

PUBLIC RIGHTS-OF-WAY IN AN ERA OF ADMINISTRATIVE AVOIDANCE

BY SARAH R. LILJEFELT, ESQ., W. ALAN SCHROEDER, ESQ., THERESE A. URE, ESQ.

ENDNOTES



Description from Text of Article	Reference/Citation
Revised Statute R.S. 2477	Act of July 26, 1866, ch. 262, § 8, 14 Stat. 251, 253, codified at 43 USC § 932, repealed by Federal Land Policy and Management Act of 1976 (“FLPMA”), Pub. L. No. 94-579, § 706 (a), 90 Stat. 2743.
Definition of “not reserved for public uses”	<i>Southern Utah Wilderness Alliance v. Bureau of Land Management</i> , 425 F.3d 735, 784 (10 th Cir. 2005).
FLPMA repealed R.S. 2477	Pub. L. No. 94-579, § 701(a), 90 Stat. 2743, 2786.
State law governs establishment of R.S. 2477 right-of-ways	<i>Sierra Club v. Hodel</i> , 848 F.2d 1068, 1083 (10 th Cir. 1988); <i>Southern Utah Wilderness Alliance v. BLM</i> , 425 F.3d 735, 768 (2005).
Washington Supreme Court quote re state law governing creation of R.S. 2477 right-of-ways	<i>Smith v. Mitchell</i> , 21 Wash. 536, 540, 58 P. 667, 668 (1899).
State requirements for creating R.S. 2477 right-of-ways vary from requiring official action, to mere public use for a period of time	<i>Southern Utah Wilderness Alliance</i> , 425 F.3d 735 at 770.
Federal government does not need to approve R.S. 2477 right-of-ways	43 CFR § 2822.1-1 (1979); 43 CFR § 244.55 (1939); <i>Sierra Club</i> , 848 F.2d at 1078.
Suits against the federal government concerning disputes in real property must be brought under the Quiet Title Act	28 U.S.C. § 2409a; <i>Block v. North Dakota</i> , 461 U.S. 273, 275-276 (1983); <i>Michel v. United States</i> , 65 F.3d 130, 131 (9 th Cir. 1995). See, e.g., <i>The Wilderness Society v. Kane County, Utah</i> , 632 F.3d 1162 (2011).
Administrative agencies do not have authority to make binding determinations regarding validity of R.S. 2477 right-of-way claims	There is a point of view that the BLM can make a binding determinations via the Recordable Disclaimer regulations (43 CFR Part § 1864.0-1), and that the USFS can made a binding determinations in the context of assessing access for a landowner (36 CFR § 251.114(f)(1)).
Post-FLPMA, BLM solicited maps showing locations of claimed public highways	US Bureau of Land Management Idaho State Office, <i>Road Management and Maintenance Guidelines for Public Lands in Idaho</i> 6 (November, 2002).

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(Cont.)

Hodel Policy for R.S. 2477 right-of-ways	Secretary of the Interior, <i>Departmental Implementation of Southern Utah Wilderness Alliance v. Bureau of Land Management</i> , 425 F.3d 735 (10 th Cir. 2005); <i>Revocation of January 22, 1997, Interim Policy; Revocation of December 7, 1988, Policy</i> attachment 1, p. 2 (March 22, 2006).
DOI notice of proposed rulemaking for R.S. 2477 right-of-way regulations	59 Fed. Reg. 39216 (August 1, 1994).
Congress's prohibition on using federal funds to finalize R.S. 2477 rulemaking	Public Law 104-134, § 110, 110 Stat. 321-177 (1996).
Public Law 104-108	Public Law 104-208, § 108, 110 Stat. 3009 (September 30, 1996). The General Accounting Office determined that Public Law 104-208 § 108 has the status of permanent law. GAO Opinion B-277719 at 1 -5 (August 20, 1997).
Babbitt Policy for R.S. 2477 right-of-ways	Secretary of the Interior, <i>Interim Departmental Policy on Revised Statute 2477 Grant for Right-of-Way for Public Highways; Revocation of December 7, 1988 Policy</i> , attachment 2-1, p. 2 (January 22, 1997); available at: http://www.highway-robbery.org/documents/1-22-1997_memo_from_Bruce_Babbitt_RS2477_policy.pdf .
SUWA v. BLM discussion	<i>Southern Utah Wilderness Alliance</i> , 425 F.3d 735.
Utah suits regarding R.S. 2477 right-of-way claims	Public Lands News, Vol. 37, No. 3, 8-10 (James B. Coffin ed., February 3, 2012).
Federal agencies are uniquely situated to handle and adjudicate the processing of public right-of-ways claims	See, e.g., 43 .FR § 4.1, wherein the USDI, Office of Hearings and Appeals, has historically and efficiently adjudicated public land matters.