

**Statement of
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Senate Energy and Natural Resources Committee
Subcommittee on Public Lands, Forests, & Mining
S. 468, Historic Routes Preservation Act
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Thank you for the opportunity to present testimony on S. 468, the Historic Routes Preservation Act, which aims to establish a procedure for resolving claims to rights-of-way (ROWs) under Revised Statute (R.S.) 2477. The Department of the Interior (Department) sincerely appreciates the sponsors' efforts to address a broad range of challenging management and resource issues associated with claimed R.S. 2477 ROWs. We support the sponsors' goal of achieving judicial and administrative efficiency for, and reducing the costs associated with, resolving these claims. We would like the opportunity to work with the sponsors on modifications to the bill to address several issues outlined in this statement and to provide technical assistance.

Background

R.S. 2477 was enacted as part of the Mining Law of 1866 to promote the settlement and development of the West. R.S. 2477 was the primary authority under which many existing State and county highways were constructed and operated over Federal lands and did not require notification to the United States because the roads were automatically conveyed as a matter of law once certain conditions were met. In 1976, Congress repealed R.S. 2477 through the passage of FLPMA as part of a national policy shift to retain public lands in Federal ownership unless disposal "will serve the national interest." The repeal of R.S. 2477 did not affect valid rights in existence when Congress passed FLPMA.

R.S. 2477 ROWs were self-executing, meaning that they could be established without any government approval or public recording of title. As a result, there is considerable uncertainty regarding the existence of R.S. 2477 ROWs that may have been established on public lands prior to the enactment of FLPMA. This uncertainty has resulted in substantial litigation between State and local governments, which generally claim title to R.S. 2477 ROWs, and the United States and Federal land management agencies, particularly the Bureau of Land Management (BLM), National Park Service (NPS), and the Forest Service.

Over the years, the Department has issued a number of policies concerning R.S. 2477 claims. These policies have attempted to: 1) identify administrative processes to accommodate or assess the validity of unadjudicated R.S. 2477 ROWs; 2) interpret the meaning of R.S. 2477 itself, particularly the words "construction," "highway," and "not reserved for public use;" and 3) to define the respective rights of the ROW holder and the land managing agency.

Despite such attempts to address the issues related to R.S. 2477, considerable uncertainty remains. This impacts State and County governments, which consider these ROWs as part of their transportation systems, and Federal land management agencies' ability to manage and

protect important natural and historic resource values underlying and adjacent to adjudicated and unadjudicated R.S. 2477 ROWs.

While R.S. 2477 is an issue in every State with Federal lands that were open to operation of the statute before 1976, Utah has been a focal point of litigation. Between 2005 and 2012, the State of Utah and 22 counties in Utah filed numerous lawsuits under the Quiet Title Act, seeking to quiet title to over 12,000 R.S. 2477 ROWs. All of the cases have been filed in Federal district court in Utah. The vast majority of these claimed ROWs are on BLM-managed lands, but at least 60 claims are pending within National Park units, including Canyonlands, Capitol Reef, and Zion National Parks, Dinosaur National Monument, and Glen Canyon National Recreation Area. To date, only two cases involving 16 claimed ROWs have been litigated through the appellate level – one involving the BLM and the other involving the NPS.

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S. 468 aims to resolve claims to R.S. 2477 ROWs by setting a new filing deadline for claimants, establishing mandatory procedures for considering and acting on claims, and requiring Federal administrative action for final resolution of such claims. Under section 4 of the bill, all previous statutes of limitations regarding claimed R.S. 2477 ROWs would be waived, and any party asserting public acceptance of such a ROW would be permitted to file a claim with the Secretary for the relevant land management agency within 25 years after enactment. Claims not filed within 25 years would be considered to have been irrevocably abandoned, and individuals or entities involved in litigation to determine the validity of claimed R.S. 2477 ROWs before enactment would be prohibited from filing. In addition, section 4 of S. 468 requires claimants to provide appropriate notice within specified periods of time. While the circumstances of individual claims vary, section 4 as currently drafted is likely to provide more time for claimants to file claims for ROWs to be granted than is currently permitted under existing law.

Section 5 of the bill sets forth the type and number of particular forms of evidence needed for claimants to prove the validity of claimed R.S. 2477 ROWs, places the burden on the claimant to prove an R.S. 2477 claim by a preponderance of the evidence, and details any relevant presumptions. If the claimant submits the evidence identified in section 5, then the claimant is presumed to have met the burden of proof and conclusively established that the R.S. 2477 ROW was publicly accepted. Under these circumstances, section 5 requires that the relevant Secretary relinquish all right, title, and interest to the ROW unless the Secretary determines that it had been previously abandoned by the claimant.

Sections 6 through 10 of S. 468 include various provisions regarding judicial review, other applicable law, extensions that may be made for deadlines in the bill, timeframes for completing any necessary policies, procedures, and any other actions necessary for implementation, and the repeal of an appropriations rider related to R.S. 2477.

The Department recognizes the significant work of Senators Flake, McCain, Heller, and Hatch and the Subcommittee to attempt to reach consensus on R.S. 2477, and we believe that S. 468 serves as a good starting point to resolve this challenging land management issue. As such, we would welcome the opportunity to work with the sponsors on several modifications to the bill

that we believe will streamline R.S. 2477 claim resolution and make implementation more effective.

First, the Department notes that the bill as currently drafted could result in impacts to Federal land resources managed by the BLM and other Department bureaus, including National Conservation Areas and similar designations, as well as Wilderness Study Areas (WSAs), which are pending final review and resolution by Congress, given the location of claimed R.S. 2477 ROWs in these areas. We would like to work with the sponsors and Subcommittee on language ensuring consistency, to the extent possible, with existing legislatively protected conservation designations.

Second, the Department is concerned that S. 468 as currently written could inadvertently increase rather than decrease agency workloads. For example, each claim would likely require a thorough review of the history and use of the ROW before 1976, including substantial records research and perhaps on-site inspections. This could be especially challenging if the Secretary were to receive a significant number of claims at once or over a short period. Depending on the volume of claims, administrative processing of R.S. 2477 ROWs by the BLM's State and Field Offices could also limit the BLM's ability to process other lands and realty applications, such as transmission lines, communication sites, leases, and conveyances, in a timely manner. The Department would like to work with the sponsors on language clarifying the terminology and definitions, ensuring that the BLM can continue to meet its other responsibilities under FLPMA and other laws, and providing the BLM and other Department bureaus with sufficient time to carry out the bill's provisions.

Conclusion

Thank you for the opportunity to provide testimony on S. 468, the Historic Routes Preservation Act. The Department is committed to safe and responsible development on public lands and understands the importance of maintaining transportation infrastructure that meets the needs of State and local governments, and we look forward to working with the Subcommittee and Congress on this important issue. I would be happy to answer your questions.