

Not a part of the 1993 Report to Congress

C.R.S. 29-20-104

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) ***

TITLE 29. GOVERNMENT - LOCAL
LAND USE CONTROL AND CONSERVATION
ARTICLE 20. LOCAL GOVERNMENT REGULATION OF LAND USE
PART 1. LOCAL GOVERNMENT LAND USE CONTROL ENABLING ACT

C.R.S. 29-20-104 (2013)

29-20-104. Powers of local governments

(1) Except as expressly provided in section 29-20-104.5, the power and authority granted by this section shall not limit any power or authority presently exercised or previously granted. Each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

(a) Regulating development and activities in hazardous areas;

(b) Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species;

(c) Preserving areas of historical and archaeological importance;

*** (d) **Regulating, with respect to the establishment of, roads on public lands administered by the federal government;** this authority includes authority to prohibit, set conditions for, or require a permit for the establishment of any road authorized under the general right-of-way granted to the public by 43 U.S.C. 932 (R.S. 2477) but does not include authority to prohibit, set conditions for, or require a permit for the establishment of any road authorized for mining claim purposes by 30 U.S.C. 21 et seq., or under any specific permit or lease granted by the federal government;

(e) Regulating the location of activities and developments which may result in significant changes in population density;

(f) Providing for phased development of services and facilities;

(g) Regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and

(h) Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.

RS 2477

Editor's note: 43 U.S.C. 932, as referenced in subsection (1)(d), was repealed in 1976 by section 706 (a) of Pub.L. 94-579, but said repeal does not terminate any land use right or authorization existing prior to the repeal. See section 701 (a) of Pub.L. 94-579.

88038278

United States Department of the Interior

June 1993

**Report to Congress
on
R.S. 2477**

The History and Management
of R.S. 2477
Rights-of-Way Claims
on Federal and Other Lands



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Assertions by the Federal Government of R.S. 2477 Rights-of-Way Over Private Lands

This issue is quite important to the U.S. Forest Service. It involves the ability of the federal government to assert R.S. 2477 rights-of-way across private land to regain historic public access to federal land. A related issue is whether federal agencies may be able to assert that such access has been established by prescription under state law whether R.S. 2477 is involved or not.

Role of State Law

R.S. 2477 is generally construed as an offer by Congress to state and local governments to construct highways. DOI has looked to state law to determine what constitutes a public highway under R.S. 2477. Federal highway law may also be relevant to this issue and will be explored at a later date.

A legal opinion issued by the Deputy Solicitor to the Assistant U.S. Attorney General on April 28, 1980, agreed that state law may govern how these roads were established, but only to the extent that it is not inconsistent with federal law. (Appendix II, Exhibit J.) Major points of contention among various public interests are the issues of federal versus state control and whose role it is to establish criteria for highway acceptance and define the scope of rights.

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The majority of state laws concerning public highways do not expressly refer to the R.S. 2477 grant. Most state highway laws focus on what constitutes a public highway, how a public highway is created, and who has the authority to create a public highway.

Few state laws address R.S. 2477

Some state statutes contain language that is very broad, while others specifically lay out definitions and formal procedures. In other states, only formal petitions through public officials are sufficient to establish a highway. Some statutes declare that public use of a road over time can establish a highway. Other statutes set forth definitions of highways that are open to interpretation. Many states have enacted multiple statutes providing for several factors that may operate to establish a highway. Some state statutes refer to undocumented roads.

* Each state is different!

Section line dedications

Several states have dedicated all section lines as public roads. If section lines could be accepted as R.S. 2477 highways an extensive cross-hatching grid of rights-of-way would be established over the existing road network. Rights-of-way would be established at one-mile intervals (north and south, east and west) across federal lands.

Proclamation of 1890, 1892
Mesa County

APPENDIX V

STATE STATUTE AND CASE LAW SUMMARIES

Appendix V contains summaries of State statutes and case law relevant to public highways and R.S. 2477 rights-of-ways. The purpose of the summaries is to illustrate the differences between States. The summaries are not intended to be all inclusive and do not attempt to give a complete statutory history

A	Alaska
B	Arizona
C	California
D	Colorado
E	Idaho
F	Kansas
G	Montana
H	Nebraska
I	Nevada
J	New Mexico
K	North Dakota
L	Oklahoma
M	Oregon
N	South Dakota
O	Utah
P	Washington
Q	Wyoming

* Did Not include 29-20-104

COLORADO

STATUTES

COLO. REV. STAT. § 43-1-202 (1984) (public highways or roads, formerly § 120-3-2 (1953), adopted in 1921)

COLO. REV. STAT. § 43-2-201 (1984) (public highways declared, formerly § 120-1-1 (1953), adopted in 1921, source L. 1883, p.251, § 1)

CASES

Estes Park Toll-Road Co. v. Edwards, 32 P. 549 (Colo. Ct. App. 1893)

Sprague v. Stead, 139 P. 544 (Colo. 1914) (grant accepted by public use of road.)

Korf v. Itten, 169 P. 148 (Colo. 1917) (citing § 5834, Revised Statutes 1908, which provided that the board of county commissioners may declare any section or township line on the public domain a public highway, held to be authorized by RS2477)

Greiner v. Board of Comm'rs of Park County, 173 P.719 (Colo. 1918) (school sections, grant accepted by public user)

Nicholas v. Grassle, 267 P. 196 (Colo. 1928) (use of way by those for whom it was necessary was an "acceptance, a road may be a highway though it reaches but one user, construction not required)

Rozman v. Allen, 68 P.2d 440 (Colo. 1937) (stock driveway)

Leach v. Manhart, 77 P.2d 652 (Colo. 1938) (acceptance by user, construction or action by public authorities not required, citing '35 C.S.A. c. 143, § 44, C.L. 1921, § 1290, which provided that the board of county commissioners could declare a section line to be a public highway)

Dhl v. McEndaffer, 225 P.2d 839 (Colo. 1950) (refers to an 1889 resolution passed by the board of county commissioners declaring all section and township lines on the public domain in the county to be public highways, acceptance by use)

Martino v. Board of County Comm'rs of County of Pueblo, 360 P.2d 804 (Colo. 1961) (citing C.R.S. §§ 120-1-1, 120-3-2 (1953), also C.R.S. §§ 120-3-18, 120-1-4, 120-1-5 (1953) now 43-1-218, 43-2-204 and 43-2-205 (1984 & Supp. 1992) respectively)

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CASES cont.

Board of County Commissioners of County of Ouray v. Masden, 385 P. 2d 601 (Colo. 1963) (citing C.R.S. § 120-1-1 (1953) to define public highway)

Brown v. Jolley, 387 P.2d 278 (Colo. 1963) (citing C.R.S. §§ 120-1-1, 120-3-2 (1953), road is highway as defined by statute)

Colorado State Law and RS 2477

Since the District of Colorado is part of the US Court of Appeals for the 10th Circuit I like to refer to cases from our District. In 2005, The 10th Circuit in *Southern Utah Wilderness Alliance v. BLM*, held that State Law governs both the perfection and scope of an R.S. 2477 right-of-way, and that the BLM does not have jurisdiction to determine the validity of a Right of Way on public lands. I think it's also interesting that the BLM has a regulation from 1993 that recognizes RS 2477 right of ways are established according to state law yet I see no reference to state laws in any of their resource management plans?

10th Circuit, 2005, SUWA vs BLM.

"Congress established a very different system for R.S. 2477 rights of way. Because there are no patents, title to rights of way passes independently of any action or approval on the part of the BLM. All that is required, as we explain further in Section V.B.2, are acts on the part of the grantee sufficient to manifest an intent to accept the congressional offer. In fact, because there were no notice or filing requirements of any kind, R.S. 2477 rights of way may have been established—and legal title may have passed—without the BLM ever being aware of it. Thus, R.S. 2477 creates no executive role for the BLM to play."

2005, SUWA vs BLM. (1993 D.O.I. Report to Congress).

The BLM also has been reluctant, until very recently, to issue regulations governing R.S. 2477 rights of way. In fact, its earliest **regulation** on the subject disclaimed any role for the federal government in implementing R.S. 2477. That regulation states, in its entirety:

The grant [under R.S. 2477] becomes effective upon the construction or establishing of highways, in accordance with the State laws, over public lands not reserved for public uses. No application should be filed under said R.S. 2477 as no action on the part of the Federal Government is necessary.