

PRESS RELEASE

9-4-97



Committee on Resources

Don Young, Chairman

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To: *National Desk/Environmental Reporter*

September 4, 1997

Comptroller General Rules That Congressional Approval Is Required For RS 2477 Changes;

Action Bans Secretary Babbitt From Voiding Right-of-Ways

Washington, D.C. - The Acting Comptroller General of the United States has ruled that Secretary of the Interior Bruce Babbitt must obtain the approval of Congress to regulate or invalidate existing right-of-ways (R.S. 2477) granted by the Federal government prior to 1976.

In response to inquiries from 30 Members of Congress, including U.S. Rep. Don Young (R-Alaska), the Acting Comptroller General of the United States, James F. Hamilton, ruled that Secretary Babbitt cannot administratively regulate or invalidate existing right-of-ways granted by the Federal government prior to 1976 under revised statute (RS) 2477.

R.S. 2477 provided the principal guarantee of access across federal lands in western states, including Alaska, for more than 100 years.

"For decades, these valid R.S. 2477 access rights have been relied upon in subsequent land selections, land purchases and property development," said Young, the Chairman of the House Committee on Resources, which has jurisdiction over Interior Department issues. "These right-of-ways provide a vital means of access across federal property and played a significant role in the social and economic growth of most western states."

"Unfortunately, Secretary Babbitt refuses to recognize these valid, public rights-of-way, granted to western states long ago and has repeatedly tried to revoke vested access rights."

Congress blocked Secretary Babbitt's anti-R.S. 2477 effort by putting a moratorium in the Fiscal Year 1997 Interior Appropriations bill that prohibited new rules or regulations pertaining to recognition of validity of R.S. 2477 right-of-ways without the subsequent approval of Congress. Moratoriums in Appropriations bills are normally effective only for the year covered. However, in the letter to the Comptroller General, Young and the other 29 Members pointed out that statutory language in the R.S. 2477 moratorium was worded in a way which clearly shows that Congress intended the provision to be permanent.

In the recent ruling, the Comptroller General agreed with this conclusion.

"The right-of-ways granted under R.S. 2477 are vital to Alaska and most of our nation's western states," Young said. "Federal lands are intermixed with lands owned by state and local governments and private interests."

"If Secretary Babbitt's efforts are successful, the Federal government could control the economy in many areas of Alaska and the West by revoking existing access rights across public lands. Also, public access to federal lands will be severely limited."

"Secretary Babbitt's proposed regulation of RS 2477 right-of-ways is not necessary since the delineation and validation of these right-of-ways is already controlled by each states' laws. An additional federal bureaucracy isn't needed to place a difficult burden on those who have put confidence and reliance on long standing, valid rights of way."

For more information, please check the House Committee on Resources Home Page at <http://www.house.gov/resources/>

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Congress of the United States
House of Representatives
Washington, DC 20515

July 29, 1997

James F. Hinchman
Acting Comptroller General of the United States
General Accounting Office
Room 7125
441 G Street, NW
Washington, DC 20548

Dear Mr. Hinchman:

The Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208) contains the following section under the heading "General Provisions" in Title 1—Department of the Interior:

Sec. 108. No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act.

We emphatically believe that Section 108 was intended by Congress to be a provision of permanent law and we seek your expedited consideration of this question and a letter decision on the issue. Time is of the essence. Out of an excess of caution, several of the undersigned Members of the House urged inclusion of this language in H.R. 2107, the current Department of Interior and Related Agencies Appropriations bill, which will soon be considered by the Senate and possibly by a conference committee. We are concerned that re-enactment of this provision could inadvertently give rise to erroneous inference that Congress does not consider the provision permanent. 32 Comp. Gen. 11 (1952); 36 Comp. Gen. 434 (1956).

Please note that Sec. 108 contains the phrase "subsequent to the date of enactment of this Act" which clearly is intended to have effect beyond the fiscal year covered by the bill. Words substantially similar to this phrase previously have been recognized as words of futurity. 65 Comp. Gen. 588 (1986). Any characterization of this phrase as only a modifier of the words "an Act of Congress" would reduce the phrase to mere surplusage because there is, to Act of Congress enacted prior to or on the date of enactment of Sec. 108 that expressly authorizes regulations pursuant to R.S. 2477. Therefore, enactment of any such authorization is necessarily subsequent to the date of enactment of Sec. 108. The phrase is meaningless if it is interpreted solely as a temporal limitation on the three words immediately preceding it. "Constructions that do not give effect to all of the words of a statute must be avoided..... 70 Comp. Gen. at 354 (citing 2 N. Singer, Sutherland's Statutory Construction 33-02 (4th ed. 1984)). Clearly, Sec. 108 contains sufficient words of futurity to indicate that it is a permanent law.

The legislative history of Sec. 108 and related predecessor provisions is both relevant and illuminating. 65 Comp. Gen. 588 (1986). The language that ultimately became Sec. 108 was taken intact from a legislative bill, S. 1425, as reported to the Senate by the Committee on Energy and Natural Resources on May 9, 1996. The language of S. 1425 was included in the Senate version of the FY 1997 Department of Interior and Related Agencies Appropriations bill at the request of the Chairman of the Committee on Energy and Natural Resources and the Ranking Republican Member of the Committee on Appropriations and its Subcommittee on Interior.

Also relevant is limitation of funds language concerning the same subject matter that was enacted for FY 1996 by the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-133):

Sec. 110. None of the funds appropriated or otherwise made available by this Act may be obligated or expended by the Secretary of the Interior for developing, promulgating, and thereafter implementing a rule concerning rights-of-way under section 2477 of the Revised Statutes.

Subsequently, the same limitation of funds language was included in H.R. 3662, the House version of the FY 1997 Department of the Interior and Related Agencies Appropriations bill, which passed the House on June 20, 1996. The conference committee considered the House's limitation of funds approach but ultimately adopted the Senate's permanent language taken from S. 1425 for inclusion in P.L. 104-208. This clearly indicates that Congress considered rejected a temporary provision in favor of a permanent one. 36 Comp. Gen. 434 (1956).

Another factor indicating that Sec. 108 is permanent law is the fact that it is contained in a paragraph under the heading "General Provisions, Department of the Interior" but applies by its own terms to "any agency of the Federal Government" As a factual matter, Sec. 108 applies to the Forest Service in the Department of Agriculture, which administers land subject to R.S. 2477 rights-of-way, and any other federal agency that administers reservations from the public lands, including the Department of Defense and the Department of Energy. The other 13 sections under the "General provisions, Department of the Interior" heading apply exclusively to the Department of the Interior. Therefore, Sec. 108 is sufficiently unrelated to the title of the Act in which it appears to support the conclusion that was intended to be permanent. B-214058, February 1, 1984.

In conclusion, it is overwhelmingly clear from a plain reading of Sec. 108, the presence of words of futurity, its legislative history and the legislative history of related provisions, and its relationship to the rest of Act that this provision is permanent law.

We would greatly appreciate your immediate attention to this question and a reply at your earliest convenience.

Sincerely,

Conrad Burns, Senator	Don Young, Representative
Orrin G. Hatch, Senator	Robert F. (Bob) Smith, Representative
Robert F. Bennett, Senator	James V. Hansen, Representative
Larry E. Craig, Senator	Joe Skeen, Representative
Frank H. Murkowski, Senator	Jerry Lewis, Representative
Ted Stevens, Senator	Bob Stump, Representative
Bob Schaffer, Representative	Charles H. Taylor, Representative
Ron Packard, Representative	Helen Chenoweth, Representative
Jim Kolbe, Representative	Richard W. Pombo, Representative
Jim Gibbons, Representative	John T. Doolittle, Representative
J.D. Hayworth, Representative	Barbara Cubin, Representative
Michael D. Crapo, Representative	George Radanovich, Representative
George R. Nethercutt Jr., Representative	Doc Hastings, Representative
John F. Ensign, Representative	Wally Herger, Representative
Chris Cannon, Representative	Randy "Duke" Cunningham, Representative

- [GAO Reply](#)
- [Comptroller General Rules That Congressional Approval Is Required For RS 2477 Changes; Action Bans Secretary Babbitt From Voiding Right-of-Ways \(Press Release: September 4, 1997\).](#)