ROAD EASEMENTS UNDER REVISED STATUTES 2477 ("RS 2477")

SUMMARY

"RS 2477 roads", or "2477 roads" are terms commonly used when referring to historic federal public land law (Revised Statutes 2477, passed by Congress as part of the Mining Act of July 26, 1866). Language of 2477 pertinent to this document states that "the right of way for the construction of highways over public lands, not reserved for public uses, is granted." That language has been interpreted by the courts to mean:

1) The federal government granted easements for the public to cross federal land. They are similar to a Colorado statutory dedication of land for public road purposes. They are often referred to as rights-of-way, or "non-possessory rights" that allow the public to travel along defined routes across federal land.

2) The easements were accepted by the public at various times when they were placed into public use (probably from the 1857 start of the Colorado gold rush until 1976, when 2477 was repealed). As stated by the 10th Circuit Court of Appeals, they

> "result from use by those for whom the [right-of-way] was necessary or convenient. It is not required that work shall be done on such a road, or that public authorities shall take action in the premises. User is the requisite element, and it may be by any who have occasion to travel over [federal] public lands, and if the use be by only one, still it suffices."

There is no requirement that the county accept the easement by entry, application to the federal government, license, patent (as with a mining claim), written easement or deed. Public use is all that is required.

Thus, a trail, road, or similar route established by the use of one person, wagons, horses, bicycles or motorized vehicles may all qualify as 2477 "highways" or roads.

3) 2477 easements are not abandoned or lost by subsequent unilateral action of the federal government (for example, after the easement is put into public use, making land available for homestead, establishing military or Indian reservations, or approving mining claims). Likewise, after the easement is established, neither the federal government nor private parties may legally bar easement access by gate or otherwise.

In fact, the 2477 easement would continue in existence until it was abandoned by specific action of the county after the easement is put into public use (for example, by resolution). Mere non-use of the easement, without evidence of the county's clear intent to abandon, is typically not enough.

Although the county may have accepted 2477 easements, litigation may be necessary to publicly clarify the county rights in those easements because it is unlikely such public acknowledgement will be forthcoming from the federal government without litigation.

Litigation would be filed in federal district court, where the county would be required to present "clear and convincing" evidence necessary to win. Research, preparation, motions, and trial may cost approximately $12,000 to more than $35,000 per case, depending on the complexity of the matter and whether the case was handled predominantly in-house or by retained attorneys. Each road would require a separate trial, so the foregoing costs would be multiplied by the number of cases filed.

It is not clear whether any 2477 cases are barred by statutes of limitations. That would depend on whether the county knew the 2477 easements were claimed or used exclusively by the federal government, and whether more than twelve years have elapsed since the county first "knew or should have known" of the federal government's claim to the easement. The statute of limitations was not raised in any of the court decisions reviewed for this document, so a determination of when the county "knew or should have known" about the federal government claim to the 2477 easements, when actions or events occurred that contributed to that knowledge, and when the statute of limitations started to run would be determined with reference to the facts on a case-by-case basis.

DISCUSSION

RS 2477 ("2477") is an abbreviation for the federal post civil war statute (Revised Statutes 2477) that was part of the mining law passed by the federal government in 1866. It was designed to help settle the west -- perhaps one more of those federal actions, along with other mining and homestead laws, that implemented the notion of manifest destiny. The idea was apparently to open large tracts of western public lands to private ownership, thus encouraging activities such as farming, ranching and mining. Roads were an absolute necessity to accomplish those objectives.

There were a number of thoroughfares that were easily identified as roads under 2477 -- roads that connected settlements and towns, trade centers, postal routes, routes for inter-territory commerce and the like. Those routes were properly preserved in the hands of local government by the grants under 2477, but the ownership of lesser known or lesser used thoroughfares has been more difficult to establish because competing interests among environmental, business and government organizations have fostered creative interpretations that require negotiated settlements to establish rights to the 2477 easements, or time-consuming, perhaps expensive, federal court litigation to establish easement rights.

In fact, few federal laws have generated more litigation than the terse provisions of 2477:

> "The right-of-way for the construction of highways over public land, not reserved for public uses, is hereby granted."

In order to create a "highway" under 2477, it was not necessary to pay for the public right-of-way (the easement) crated by that law, or to obtain a permit or other form of federal permission to obtain or use the right-of-way. It was only necessary to make use of the land, or construct something to enable passage over it. The federal government didn't have laws or regulations governing the use of roads, so it was left initially to the U.S. territories (for example, Colorado Territory), then the states, to provide some interpretive guidance on the meaning of the 2477 terms.

In Colorado, many of the roadways established under 2477 were obvious (for example, postal routes, trade and transportation routes between settlements and towns), so there is little question that those "highways" were, and probably are today, valid public thoroughfares under 2477. On the other hand, defining and applying the terms of 2477 to more obscure passages, such as single-person trails, horse trails, mining trails, fur trade routes, and the like, and thereby concluding what thoroughfares are, in fact, granted for public road use under 2477 has been primarily guided by court interpretations.

Key questions are: what is a 2477 "highway;" what is a "right-of-way"; what is "construction;" and what is "public land, not reserved for public use?" In other words, to be established and continue as a public road under 2477, it must be a "highway" (according to the courts, an easement or right-of-way), it must be constructed (according to the courts, used for public passage), and it must have been established before the land underlying the route was "reserved" for public purposes (meaning that the 2477 right-of-way grant was accepted by public use before the federal government acted to withdraw the 2477 grant and redirect the land to another use, such as an Indian reservation, military reservation, homestead, mining claims, federal enclave, etc.).

The task of interpreting the 2477 language may seem somewhat straightforward. After all, U.S. 6, Interstate 70, etc. are clearly "highways" so what's the problem? The problem is that rights created by laws, such as the 1866 RS 2477, are generally interpreted according to the meaning of their words at the time the law was passed. So the courts will typically interpret 2477 according to the historic meaning as determined with reference to the surrounding environment and events of the day (in this case, the natural environment and government objectives existing in 1866).

So a "highway" contemplated by RS 2477 in 1866 would not be a high speed vehicular route governed by a speed limit in 1866; and an act of "construction" could, under 2477, be nothing more than moving some logs or rocks to facilitate passage over a creek during high water to and from a gold mine.

In addition, there is the question of what government should interpret 2477. Is the interpretation left exclusively to the federal government, or do the states have some role in defining 2477 when applied to the lands within state boundaries (or previous territory boundaries)?

The federal government has attempted, with varying degree of success, to preempt all interpretation under 2477 through various policy directives. For example, Bruce Babbitt, Secretary of the Interior in the Clinton administration, issued policies and draft regulations that would restrict motorized access to federal lands. Babbitt further required that BLM inspect the route to determine whether "construction" had occurred. See, for example, 59 Fed. Reg. 39216, Aug. 1, 1994. That was a significant departure from the policy under Donald Hodel and the G.H.W. Bush administration policy that would recognize 2477 claims if: 1)they were not on reserved public lands at the time they went into use; 2) there was some sort of construction such as removing vegetation, removing obstructions or filling low spots; and 3) the route was open to public use by vehicles, pedestrians and/or pack animals. See, for example, 69 FR 494-01, 1993.

Congress apparently disapproved of the comparatively heavy-handed approach by Babbitt and passed legislation preventing Babbitt from implementing his proposed policies and regulations without Congressional approval. Babbitt followed with a memo that set a "temporary" Interior policy that required the foregoing "inspection" and a determination that a "highway" was used by the public for the passage of vehicles carrying people from place to place. Although Babbitt's memo was clearly inconsistent with the obvious intent of 2477 to cover more than vehicular traffic routes (there weren't any cars in 1866), it nevertheless spurred activity by local governments asserting 2477 road claims, and private parties asserting homestead and mining claims, to identify evidence that would support their case.

Regardless of the efforts by Interior to control 2477 rights-of-way, the courts have often been the final arbiter of competing claims for those easements, often looking to both state law and federal law in determining whether a public right-of-way has been created under 2477. As to Colorado, it may be said simply that 2477 grants the easement, Colorado territorial or state law has determined whether the road is a "highway" that has been accepted by the local government, and the federal government has agreed with Colorado's decision in that regard. See, for example, Sierra Club v. Hodel, 675 F.Supp. 594, 604 (D. Utah 1987), in which the court stated that "whether and when the offer of grant is accepted by the public are questions resolved by state law." In accord, see Wilkenson v. Dep't of Interior, 634 F.Supp. 1265, 1272 (D.Colo. 1986) and United States v. Jenks, 804 F.Supp. 232, 235 (D.N.M. 1992).

Looking, then, to interpretations under Colorado state law, 2477 would include "highways" established by mere use. In the case of Leach v. Manhart (102 Colo. 129, 77, P.2d 652(1938), the Colorado Supreme Court declared

> The sum of our holdings is that the statute [RS 2477] is an express dedication of rights of way for roads over unappropriated government lands, acceptance of which by the public results from "use by those for whom it was necessarily convenient." It is not required that "work" shall be done on such a road, or that public authorities shall take action in the premises. User is the requisite element, and it may be by any who have occasion to travel over public lands, and if the use be by only one, still it suffices.

The foregoing rule has been restated by the federal 10th Circuit Court of Appeals, and was applied in Camp Bird v. Board of County Commissioners (215 P. 3d 1277 2009), where the Colorado Court of Appeals found that a route appearing on 1877 maps, supplemented with evidence that a narrow mountain gap (a geographical feature) dictated the route to be followed by the public, was sufficient to establish the location of a public road. Applying the rule in Leach, supra, roads have been found to include those used by only one property owner (Wilkenson v. Department of the Interior, 634 F. Supp. 1265, 1272 (D. Colo. 1986); and footpaths (Wilkenson, supra; Simon v. Petit, 651 P.2d 418, 419 (Colo. App. 1982), aff'd, 687 P.2d 1299 (Colo. 1984).

Colorado decisions are consistent with the United States Supreme Court case of Central Pacific Railway Co. v. Alameda County, 284 U.S. 463, 467 (1932), in which the United States Supreme Court recognized that the location of roads under 2477 was not a rigid standard. In supporting a road location established by the passage of wagons over natural soil, the Court stated

> ...we know, as a matter of ordinary observation, that in such cases the line of travel is subject to occasional deviations owing to changes brought about by storms, temporary obstructions, and other causes...[and]...By the Act of July 26, 1866 [RS 2477], c. 262, 14 Stat. 251-253, Congress dealt with a variety of rights upon the public domain...By section 9 (43 USCA 661) it is provided that rights to the use of water for mining, agricultural *or other purposes*, which have vested and accrued and are recognized and acknowledged by local customs, laws, etc., shall be maintained and protected..." (emphasis added).

In expanding its decision to address the purpose and affect of 2477, the Court stated that

> the practice of laying out "highways" in large numbers across public lands prior to 1866 was so long continued, and the number of roads thus created was so great, that it is impossible to conclude otherwise than that they were established and used with the full knowledge and acquiescence of the national government. These roads, in the fullest sense of these words, were necessary aids to the development and disposition of public lands. They facilitated communication between settlements already made, and encouraged the making of new ones, increased the demand for additional lands, and enhanced their value...The section of the act of 1866 [2477] granting rights of way for the construction of highways, no less than that which grants the right of way for ditches and canals, was, so far as then existing roads are concerned, a voluntary recognition and confirmation of pre-existing rights, brought into being with the acquiescence and encouragement of the [federal] government [and]...were such rights as the [federal] government in good conscience was bound to protect against impairment from subsequent grants.

Thus, it seems clear that "highways" within the meaning of 2477, as applied to Colorado roads, includes a very wide range of uses, including frequently traveled vehicular thoroughfares, carriage ways, bridle paths, footpaths (even footpaths used by a single-person), bridges, turnpikes, railroads and wagon routes, whether paved, gravel, dirt, clay or other, and regardless of whether they were used continuously or sporadically. The existence of "highway" locations may be established by a wide range of evidence, including surveys, geological formations, historical records, real estate records, government records -- in short, any credible evidence that reliably assists in establishing the location of the public road easement.

In Colorado, highways established over land in the public domain by use under 2477 are unaffected by subsequent grants, federal attempts to re-acquire the right-of-way, or reservation by the federal government subsequent to the right-of-way being established (that is, accepted by public use). Instead, those routes continue as county easements today, just as they were in 1866. Nevertheless, they are not an outright conveyance of the land to the local government.

The right-of-way granted to the public by 2477 is "an express dedication for a right of way for a road over the land belonging to the government not reserved

for a public use." Sprague v. Stead, 56 Colo. 538, 543, 139 P. 5444, 545 (1914). It is an easement that creates a non-possessory right in its holder (for example, Garfield County) to enter and use "unreserved" land in the possession of another (the federal government) for limited purposes (trails, roads and the like) authorized by the easement. "Unreserved public lands" are lands owned by the federal government that are subject to sale or other disposal under the general land laws and not subject to prior valid claims by others. Fairhurst Family Association v. United States Forest Service (172 F.Supp. 1328 (2001)).

A county right-of-way for public passage under 2477 is an easement for public passage over federal land as it existed under that law, or was acquired under that law prior to its 1976 repeal by the Federal Land Policy Management Act (FLPMA). During that 110 year timeframe, 2477 provided a continuous offer to the county from the United States for right-of-way access across unreserved public lands; and all perfected 2477 rights-of-way in existence on the 1976 repeal of 2477 remain valid and unenforceable easements for public passage (at least to the extent established by the original easement use, with perhaps a very limited allowance for expansion over time in light of well-documented change in use prior to 1976).

It is important to recognize that a public ROW, whether established by 2477 or otherwise, does not include the title to the land over which it passes. Instead, the owner (for example, the federal government) has the right to use the land where the easement exists as long as the owner does not interfere with the rights of the easement holder. Martino v. Board of County Commissioners, 146 Colo. 143, 360 PR 2d 804 (1961), Sprague v. Stead, 139 P. 544 (1914); Roaring Fork Club v. St. Jude's Co., 36 P.3d 1229 (Colo. 2001); and the dates that 2477 road easements were established are important because of various actions by the United States to reserve public land, which removed that land from the reach of 2477.

For example, in 1910 the Pickett Act gave authority to the President to "at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States...and reserve the same..." See Act of June 25, 1910, ch. 421, sec. 1, 36 Stat. 847 as interpreted and applied in Southern Utah Wilderness Alliance v. Bureau of Land Management, 147 F.Supp. 1130, 1142 (2001).

In addition, Congress passed the Federal Land Policy Management Act (FLPMA, 43 USC sec 1763) in 1976, which repealed RS 2477 and "its open-ended grant of

rights-of-way over public lands while explicitly protecting RS 2477 rights-of-way in existence on the date of FLPMA's passage." Hodel, supra, at 1078. In explaining FLPMA, the Southern Utah case, supra, at 1133, statured FLPMA represented the federal government's departure "from the earlier policy of giving away federal lands in favor of a policy of sound management of federal lands." The court went on to explain

> Since the passage of FLPMA, a right-of-way on federal land must be granted by the [federal government], which must base its decision on considerations of "national and State land use policies, environment quality, economic efficiency, national security, safety and good engineering and technological practices [but]...rights-of-way which were perfected prior to 1976...are valid even after the repeal of RS 2477." 43 USC sec 1763.

Nevertheless, there are significant hurdles in establishing pre-1976 rights to those public rights-of-way because "convincing evidence" must be found to support the county claim that the rights-of-way were vested in the public by use prior to action by the federal government making the federal land unavailable (that is, "reserving" the land for some other specified federal purpose, such as homestead, mining, Indian or military reservations). Accordingly, at a minimum there must be

1) Research to determine whether the federal land had been reserved before a 2477 easement was accepted (used as a public path, trail or road). That research would probably include finding and analyzing historical and contemporary records to determine whether the easement overlays land used for national parks, federal wilderness area, military reservations, federal enclaves, Indian reservations, homesteads, mining claims (whether or not patented), federal forests, federally protected environments, or other federal reservations (note: BLM lands are apparently not "reserved" under 2477); and

2) In those cases where there has not been a federal reservation of the land prior to the public acceptance of the 2477 road easement, the location of the easement would need to be established by "convincing evidence," which is evidence sufficient to convince a court that the federal government's evidence opposing the county claim (assuming there is opposition) was not "substantial." Southern Utah, supra, at 1136-1137. Convincing evidence supporting the location and public right to the road easement would likely include testimony and letters of witnesses, geographical features supporting a logical inference of the easement location, historical documents (maps, deeds, land patents, mining

claims, historic settlements, trade routes, leases, etc.), easements/road structures in place or historically recorded, acts to remove easement obstructions or impediments, other indications of past use, aerial photographs, surveys, wilderness inventory records, range and grazing files, historic maintenance records, and other government records (for example, records of the Federal Highway Administration, Central Federal Lands Highway Division, and Bureau of Roads).

If the foregoing analysis establishes convincing evidence that the public has a vested road easement under 2477, the county should consider three options to create a public record clarifying public rights in the easement:

1) File a disclaimer application with the appropriate federal agency (probably either the Department of the Interior, BLM, or Department of Agriculture, Forest Service), accompanied by convincing evidence that establishes the county vested interest in the road easement. This procedure asks the federal government to officially relinquish any claim to the easement in question. 43 CFR 1860.

Although this seems to be a simple way to resolve 2477 road easement issues, there are at least three reasons why the chance for success under this option is remote.

a) Apparently, the Department of the Interior (and maybe the Department of Agriculture if it elects to follow Interior's lead), may still regard the Babbitt policy mentioned previously in this document as limiting the availability of the federal disclaimer and land relinquishment option.

b) Although a GPS record of the road easement, combined with other evidence, may be sufficient evidence in court quiet title actions, the disclaimer application apparently requires a survey and legal description of the 2477 right-of-way. If a survey has not been done previously, the cost in complying with this requirement for a large number of easements could be significant.

c) Although the county presents convincing evidence to establish public rights in a road easement, the federal government is not obligated to issue a right-of-way disclaimer. In fact, there seems to be a concern on the part of the federal government that any

disclaimer granted will likely result in legal action by any number of environmental groups to void the disclaimer as arbitrary, capricious and illegal. One motivation underlying some of these court actions opposing federal recognition of 2477 roads may be found in the Wilderness Act of 1964 (sec 2(c)3). That Act requires land to be "of sufficient size to make practicable the preservation and use in an unimpaired condition [and]...,subject to private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this act." It may be a significant indication of likelihood for success in obtaining a federal disclaimer to note that the BLM has apparently issued only 62 recordable disclaimers since 1976 (less than 2 per year).

The time associated with this process is unknown, but based on prior experience with federal government processes (probably involving decisions to be made in Washington, D.C.), the time to obtain a decision may range from 12 to 18 months. The cost, if handled in-house, assuming a cost average of $40 per hour would probably be about $10,000 plus expert fees (probably survey, maybe engineering, costs). In addition, because the federal government is not compelled to issue the disclaimer and easement relinquishment, a court quiet title action may still be necessary.

2) A second alternative is to file a quiet title suit in federal court against either the Department of Agriculture Forest Service or The Department of the Interior BLM (depending on the location of the road easement). The case would ask the court to declare the rights of the county in the 2477 road easement and judicially establish its location. Success would require convincing evidence similar to that required to support a request for disclaimer, but would also be subject to various motions, hearings and perhaps negotiations before and during trial.

The time associated with such quiet title action would probably be roughly two to three years from filing to trial, and could possibly require a minimum of 160 hours research, 60 hours discovery, 80 hours trial prep and motion practice, 16 hours trial, court costs, and perhaps expert travel and fees. Handled in-house at an average cost of $40/hour, the case would cost a minimum of about $12,000+. If retained counsel was hired, a negotiated cost would probably approximate $160 per hour, or $50,000+.

The time and cost associated with the disclaimer or court alternatives would apply to each 2477 road easement (for example, if the county decided to take action on 50 roads, multiply the above by 50).

3) A third alternative is to seek federal legislation to achieve the county objective. That strategy would logically focus on passage of federal law that would effectively remove the "Babbitt moratorium" by specifying information to be submitted to the federal government (the BLM, Forest Service, Department of Agriculture, Department of the Interior, and/or others) in order to establish the vested 2477 public road easement. The legislation would compel the federal government to issue a disclaimer and publicly relinquish any federal right in the right-of-way when it received the requisite evidence established by the legislation..

Although legislation would probably require a case-by-case analysis to establish the right of the county to compel a disclaimer and relinquishment, it would likely limit litigation and reduce costs because the federal government would be compelled by law to issue the disclaimer and relinquishment under defined circumstances. In addition, by defining the evidence required to successfully establish rights to a 2477 road easement, it may be reasonably anticipated that well-crafted legislation could foster negotiated settlements of 2477 easement claims.

In theory, costs may be controlled somewhat by internalizing research and identification/gathering of convincing evidence to support the county 2477 right-of-way claims. Nevertheless, unless the suggested federal legislation is passed, or the federal government is willing to settle 2477 easement claims, federal quiet title litigation will be necessary to publicly acknowledge the public rights in those easements.

Regardless of the chosen course of action, it is probably worth noting that, regardless of success in obtaining clear public right to control a 2477 road easement, that easement does not convey the right to use property that is located outside boundaries of the easement. That land is still controlled by its owner and manager (the federal government BLM and Forest Service), and includes the right to regulate entry. In other words, the road easement may provide a route across land to a fixed destination, but the easement does not grant authority to depart from the easement at any point along its course, beginning or end.

Moffat and Montrose Counties have passed resolutions establishing their policies pertaining to roadway easement claims under RS 2477. Those resolutions may be properly regarded as policies governing those counties' approach to RS 2477 road issues, but they do not change or modify the procedures necessary to affirm public easements under RS 2477, FLPMA, and other federal policies and cases relevant to RS 2477 right-of-ways as discussed in this document. Whether a policy statement similar to that announced by Moffat and Montrose Counties is appropriate for Garfield County is within the discretion of the Board of County Commissioners and is not addressed here.

As a final note, there is a 2010 pilot project entered into between Utah and the Department of the Interior that is an attempt to negotiate settlement of 2477 ROW issues between the federal government, Iron County, Utah, and other interested parties, such as the Sierra Club, Audubon Society, Wilderness Society, energy and business interests, and others. There are no final agreements regarding 2477 road easements after two years of negotiations, but the Iron County Attorney's office has characterized the ongoing project as "predominantly hopeful."

APPENDIX

(authorities reviewed in developing text)

Cases

Central Pac. Ry. Co. v. Alameda County, Cal., 244 U.S. 463 (1932)

Jennison v. Kirk, 98 U.S. 453, 25 L. Ed. 249

Broder v. Water Co., 101 U.S. 274, 25 L.Ed. 790

Town of Red Bluff v. Walbridge, 15 Cal. App. 770

Southern Utah Wilderness Alliance v. Bureau of Land Management, 425 F.3d 735 (10th Cir. 2005)

Sierra Club v. Hodel, 848 F.2d 1068 (10th Cir. 1988)

Clouser v. Espy, 42 F.3d 1522 (9th Cir. 1994)

Jeremy v. Bertagnole, 101 Utah 1, 116 P.2d 420 (1941)

United States v. Oregon, 295 U.S. 1, 27-28, 55 S.Ct. 610, 79 L.Ed. 1267 (1935)

Shultz v. Dep't of Army, 10 F.3d 6499, 655 (9th Cir. 1993)

Murray v. City of Butte, 7 Mont. 61, 14 P. 656 (Mont.Terr.1887)

Sprague v. Stead, 56 Colo. 538, 139 P. 544 (1914)

Boyer v. Clark, 7 Utah 2d 395, 326P.2d 107 (1958)

Leach v. Manhart, 102 Colo. 129, 77 P.2d652, 653 (1938)

Wilkenson v. Dep't of Interior, 634 F.Supp. 1265, 1272 (D.Colo.1986)

Barker v. County of La Plata, 49 F.Supp. 2d 1203, 1214 (D.Colo.1999)

Camp Bird, Colorado v. Board of County Commissioners, 215 P.3d 11277 (Colo. App. 2009)

State ex rel. Dansie v. Nolan, 58 Mont. 167, 191 P. 150, 152, 152 (1920)

Martino v. Board of County Commissioners of Pueblo County, 360 P.2d 804, No. 19426 (Colo. 1961)

APPENDIX (cont.)

Farnhurst Family Association v. United States Forest Service, Department of Agriculture, 172 F.Supp. 2d, Civ.A. 00-K-1297 (Dist. Colo. 2001)ge

Brown v. Jolley, 153 Colo. 530, 537, 387 P.2d 278, 281-282 (1963)

Laws and Texts

Federal Land Policy and Management Act (FLPMA), Pub.L.No. 94-579, 90 Stat. 2744

U.S. Department of the Interior and Related Agencies' Appropriations Act, 1997, Sec 108, enacted by the Omnibus Consolidated Appropriations Act, 1997, Pub.L. No. 104-208, 110 Stat. 3009 (1996)

Act of July 26, 1866, ch. 22, secs 7,8,10 an 11, 14 Stat. 251, 253, et seq

Isaac Grant Thompson, A Practical Treatise on the Law of Highways (1868)

John Egremont, The Law Relating to Highways, Turnpike-Roads, Public Bridges and Navigable Rivers (1830)

BLM Manual 2801, Rel. 2-263, 2801.48B1b (March 8, 1989), reprinted in 1993 D.O.I. Report to Congress, App. II, Exh. M

James Kent, 3 Commentaries on American Law 572-73 (10th Ed. 1860)

Charles F. Wheatley, Jr., II, Study of Withdrawals and Reservations of Public Domain Lands, A-1 (1969)