

**NATIONAL WILDLIFE FEDERATION®***People and Nature: Our Future Is in the Balance*

Rocky Mountain Natural Resource Center

**NATIONAL
WILDLIFE
FEDERATION®**
www.nwf.org

June 11, 2003

The Honorable Bill Owens
136 State Capitol
Denver, CO 80203-1792

SUBJECT: R.S. 2477

Dear Governor Owens:

I am writing on behalf of the National Wildlife Federation (NWF), the nation's largest member-supported conservation group. Along with our state affiliate, Colorado Wildlife Federation (CWF), we represent over 90,000 members and supporters in the State of Colorado alone, and over four million members and supporters nationwide.

These members and supporters use federal lands in Colorado for wildlife viewing, photography, study, hunting, fishing and other activities. Our members and supporters recognize the importance of access to public lands and the legitimate transportation needs of local communities, but they also have a deep appreciation for the recreational opportunities and wildlife habitat provided by Colorado's remaining roadless, un-fragmented public lands. Colorado's wildlands and native wildlife are rare and precious natural resources. They deserve protection for that reason alone. They are also an important component of Colorado's economy and are the centerpiece of your current promotion to draw tourists to Colorado. Therefore, NWF believes the State of Colorado should work with the federal land management agencies to ensure the continued vitality of Colorado's wildlands and wildlife.

Recently, NWF became aware of a letter from Greg Walcher, Executive Director of Colorado's Department of Natural Resources, to United States Secretary of the Interior, Gale Norton, identifying several points for a potential "memorandum of understanding" with the United States Department of the Interior (DOI) regarding state and county rights-of-way over federal public lands. This letter calls for "a resolution to the RS-2477 debate." NWF agrees that the debate over R.S. 2477 rights-of-way should be resolved. However, the approach set forth in Director Walcher's letter of May 15, 2003, will lead to more controversy and more litigation, not less. Moreover, it may irreparably damage Colorado's public lands.

R.S. 2477 is an antiquated statute. Enacted immediately after the Civil War, it was one of many congressional actions intended to encourage settlement of the "untamed" West. It provided for the grant of rights-of-way across unreserved federal lands to states and counties for public highways. For more than 100 years, states and counties were free to carve roads across federal public lands. In 1976, however, Congress recognized that these lands hold resources that are becoming increasingly rare in a modern, industrialized America. The Federal Lands Policy and Management Act mandated that the federal public lands be held in trust permanently for the use

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and enjoyment of all Americans. Congress explicitly repealed R.S. 2477 and required that additional rights-of-way across federal lands should not be granted unless the environmental harm associated with such grants could be minimized.

To protect the investment states and counties had already made in road construction and maintenance, Congress exempted existing public highways from the new legislation. That loophole can and is being abused to undermine Wilderness, Wildlife Refuge and National Park and Monument protection for our federal public lands, through the assertion of right-of-way claims for cow paths, wildlife trails, creek beds and even section lines. NWF is deeply concerned that adopting the proposal outlined in Director Walcher's letter will result in more litigation over the validity of R.S. 2477 claims, and will fail to provide for adequate protection of wildlife, fisheries and outdoor recreation values on federal public lands. Some of the documented impacts of roads on wildlife and wildlife habitat include direct loss of habitat; increased habitat fragmentation; decreased wildlife security; lost hunter opportunity; decreased quality of experience; spread of noxious weeds and edge species; increased erosion; decreased water quality; and increased illegal activity, such as wildlife poaching, artifact collecting, littering and illegal off-road use. The negative impacts to Colorado's wildlife resources will also seriously erode the financial health of the Colorado Division of Wildlife. The creation of new roads, based on questionable R.S. 2477 claims, is almost certain to lead to more degradation of Colorado's remaining public wildlands.

Valid R.S. 2477 rights-of-way may serve an important role in guaranteeing public access and travel. To be valid, however, R.S. 2477 highways must be truly "public" and they must have been physically "constructed" and maintained. Director Walcher's proposal for resolving R.S. 2477 claims in the State of Colorado falls far short of meeting these legal requirements. For example, it appears to require no actual highway construction and asserts that "any surface treatment" is adequate to claim an R.S. 2477 right-of-way. In his letter, Director Walcher declares that no federal approval is required when an existing R.S. 2477 right-of-way is expanded or upgraded far beyond its original use and boundaries. Director Walcher also suggests that precise identification of the location of the road is not necessary for the recognition of an R.S. 2477 right-of-way. These elements of Director Walcher's proposal are both inconsistent with current law and insufficiently protective of Colorado's rare and precious natural resources.

In addition, Director Walcher's letter states that "valid RS-2477 claims have been, and could continue to be, made on rights-of-way" within Wilderness Study Areas, National Wildlife Refuges, National Park Service Lands and National Monuments. Although R.S. 2477 itself may not expressly preclude such rights-of-way if constructed prior to the reservation of these lands, it is difficult to identify a public transportation need that can only be met by carving additional highways through Wilderness Study Areas, National Wildlife Refuges, National Parks and National Monuments. NWF believes strongly that the public interest in preserving these lands and the resources they safeguard outweighs any benefit derived from the assertion of R.S. 2477 rights-of-way. Colorado's wildlands, National Wildlife Refuges, National Parks and National Monuments are natural treasures. Road construction on these lands should not proceed based solely upon the existence of routes that were once traveled. Moreover, an attempt to assert R.S.

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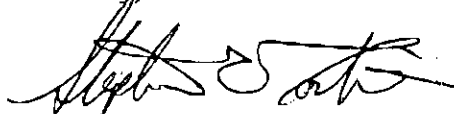
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2477 rights-of-way across Wilderness Study Areas, National Wildlife Refuges, National Parks and National Monuments in the State of Colorado via a private memorandum of understanding with DOI will make that memorandum extremely controversial. It will fuel rather than resolve the R.S. 2477 debate.

As an alternative to the memorandum of understanding proposed in Director Walcher's letter, NWF supports legislation that has been introduced into the United States Congress. H.R. 1639, the "R.S. 2477 Rights-of-Way Act of 2003," would provide a consistent and reasonable method for the processing and evaluation of R.S. 2477 claims. This legislation would end uncertainty and litigation by creating both coherent procedures and a consistent standard for adjudication of R.S. 2477 road claims. By acknowledging those roads that demonstrate evidence of construction, maintenance and routine use, H.R. 1639 would promote legitimate transportation needs while eliminating abusive R.S. 2477 claims.

In closing, NWF wishes to emphasize that Colorado's federal public lands are a resource of not merely local but national and international significance, as well as a substantial draw for tourism, hunting and recreation dollars to the State. Decisions regarding their future should be made in a process open to the involvement of all interested parties—the State, local communities and the public who make use of these lands and their resources.

Sincerely,



Stephen C. Torbit, Ph.D.

Center Director

Rocky Mountain Natural Resource Center

ST/jca

c: Rick Cables, Regional Forester, Rocky Mountain Region (2), USDA Forest Service
Gale Norton, Secretary, Department of the Interior
Ralph Morganwick, Region 6 Director, US Fish and Wildlife Service
Suzanne O'Neill, President, Colorado Wildlife Federation
Karen P. Wade, Director, Intermountain Region, National Park Service
Greg Walcher, Executive Director, Colorado Department of Natural Resources
Ron Wenker, Colorado State Director, Bureau of Land Management
The Honorable Mark Udall, US House of Representatives