

Laws and Definitions

RS 2477 an 1866 Act addressing rights-of-way

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To assist line officers, RAP coordinators, public affairs officers, employees and workshop facilitators to better understand the law, the issue associated with the law, its current status and agency policy, as some of these roads are part of our primary forest transportation system.

The Law

RS 2477 (Revised Stat. 2477) was passed July 26, 1866 as Section 8 of an Act entitled "An Act Granting the right-of-way to Ditches and Canal owners over the public lands, and for other purposes" it states.

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

The law was repealed by the Federal Land Policy and Management Act, October 21, 1976, (PL94-579, Sec. 706 (A) 90 Stat. 27-13-94).

Important Definitions from the Act

Right-of-Way

A bundle of rights widely recognized in common law and explicit in many statutes and court decisions which govern access across a piece of property. In the case of RS 2477 Rights-of-Way, the rights are held by local government. The bundle of rights include the ability to travel freely, maintain and improve the road under conditions and otherwise manage its use.

Construction

Construction is a physical act of readying the highway for use by the public according to the available or intended mode of transportation; foot, horse, vehicle, etc. Removing vegetation, removing rocks, or filling in low spots may be sufficient to qualify as construction for a particular use. Road maintenance over several years may equal actual construction, as well as the passage of user vehicles over time.

Highway

A term that has a broad range of definitions. A definite route that is freely open for all to use. The public has the right to come and go at will. The inclusion of a highway in a state, county, or municipal road system constitutes being a public highway. In California legislature, in its sixth session on January 1, 1855, defined highways as; "All roads shall be considered as public highways which are now

used as such and have been declared such by order of the Court of Session or Board of Supervisors, or which may be hereafter so declared by the Board of Supervisors."

Public Land

Simply means lands owned by the public.

Is Hereby Granted

The right-of-way is created when the criteria set forth in the law are met. It is not necessary to apply for the right-of-way. RS 2477 rights-of-way have no mandated or maximum widths. The term of the right-of-way is permanent.

Current Status of RS 2477

The Department of Interior has deferred all actions to process RS 2477 assertions as of January 1997. The events that led up to the deferral began in September 1992 when Congress, because of continued controversy regarding the Act, directed the Department to study the history, impacts and status of the issue and prepare a report that provided sound recommendations for assessing the validity of RS 2477 claims. The Department report was compiled from research and 5,000 pages of public comments from meetings held in eight western states including Alaska. In June 1993, the report was submitted to Congress recommending that regulations be written to address the ongoing concerns.

In August 1997, the Department published regulations. In the draft regulations, a claimant of an RS 2477 right-of-way assertion was defined as; "any state or political subdivision of a state." Following their review, Congress prohibited development of the regulations. To date no final rules on RS 2477 assertions have been implemented. The absence of uniform federal guidance has resulted in the failure of court decisions to provide consistent interpretation due to the courts application of widely varying state laws.

Current Forest Service Policy

Current Forest Service policy is found in Forest Service Manual 2734.5 & .6. The policy recognizes only public road agencies as valid RS 2477 applicants. It encourages those agencies to document their claims by applying for appropriate easements. It protects the Government's servient interests and follows the 1988 policy developed by Interior Secretary Donald Hodel to interpret the rights granted by the revised 2477 statute. The policy is based on three conditions: 1. The land must be public land, 2. Some form of highway must have been constructed, 3. The highway must qualify as a public highway.

California statutes which apply to RS 2477

- 1.) California streets and Highway Code sec. 25
- 2.) California streets and Highway Code sec. 978

California applicable case law

McRose vs. Bottver 22 p. 393 (Cal. 1889)

Bequette vs. Patterson 37 p. 917 (Cal. 1894)

Schewerdtle vs. Placer County 41 p. 448 (Cal. 1895) citing St. 1870 p. 457

Sutter vs. Nicolaisen 44 p. 805 (Cal. 1896)

Town of Red Bluff vs. Wolbridge 116 p. 77 (Cal. Ct. App. 1911)

People vs. Ouong Sing 127 p. 1052 (Cal. St. App. 1912)

Central Pacific RR. Co. vs. Alameda Co. 299 p. 77 (Cal. 1931)

Ball vs. Stephens 158 p. 2d 207 (Cal. St. App. 1945), at 209, it states - "In order that a road should become a public highway, it must be established in accordance with the law of the state in which it is located."