Report From Capitol Hill

Roadless Areas Threatened by R.S. 2477

The already existing road network on our National Forest system is eight times the length of the Interstate Highway system. Mark A. Wilson photo.

An old law could wreck havoc on what is left of our roadless areas. Revised Statute 2477 (R.S. 2477), as a provision of the Lode Mining Act of 1866, granted the "right-of-way for the construction of highways over public lands not reserved for public uses." The law has been used to justify reopening, widening, and paving old roads, pack trails, and footpaths.

Although the law was repealed in 1976 under the Federal Land Policy Management Act (FLPMA), states, counties, and individuals continue to cite R.S. 2477 as justification for thousands of "right-of-way" (ROW) claims on public lands. Because the 1976 repeal recognized "pre-existing" claims, ROWs established before FLPMA remain valid. A 1988 decision by Secretary of the Interior Donald Hodel further enlarged this loophole, legitimating claims for any route in existence before 1976, including animal tracks and trails. According to this interpretation ROWs can be expanded without environmental review or public input, regardless of whether the road passes through a national park, sensitive wildlife habitat, or a wilderness area.

Hodel's policy spawned thousands of new claims, particularly concentrated in Alaska and Utah—two states which pushed hard for this lax interpretation of the law. But Hodel's 1988 policy statement overstepped the bounds of executive power by failing to follow appropriate rulemaking procedures, and in 1991 Congress directed the Interior Department to reevaluate R.S. 2477 and issue regulations to insure that implementation followed the intent of the law.

The Interior Department released draft regulations last year, and is now in the process of considering public comments and revising its proposed rules. However a new bill sponsored by Representative James Hansen (R-UT) threatens to completely undermine this rulemaking process and legislatively 'settle' the R.S. 2477 issue by authorizing virtually any claim which meets state law. Under H.R. 2081, the "R.S. 2477 Rights-of-Way Settlement Act," states, counties, and individuals may claim ROWs by filing notice with the Department of the Interior, Agriculture, or Defense. The claimant has no obligation to justify the claim, and in contesting the ROW, the burden of proof falls entirely upon the federal government. Virtually any road, track, or trail in existence prior to 1976 is allowable as long as it falls within the scope of state law. Hansen's proposal completely insulates R.S. 2477 claims from public challenge and environmental review.

Wise-users delight in the implications of H.R. 2081, which will fuel their efforts to stop wilderness designation and keep public lands fully accessible to motorized abuse. Passage of this bill could severely set back efforts to prevent and close roads on public lands. Write or call your Representatives and Senators today!

Special thanks to Road-RIP and Barbara Borst for this report.

H.R. 2081: The R.S. 2477 Rights-of-Way Settlement Act

* Allows states, counties, or individuals to file right-of-way claims with the Department of the Interior, Agriculture, or Defense.
* Claimants must submit "a map and a general description of the route, termini and scope of the right-of-way" and identify the state and county of the right-of-way. No other justification is required.
* Claims can be filed for up to 10 years after the enactment of H.R. 2081.
* Claims are validated unless challenged by the Secretary within two years of filing.
* Claims can only be denied if the U.S. Government proves that 1) "the right-of-way was not a public right-of-way"; 2) the ROW violates state law; or 3) the land "was reserved for public use" prior to the ROW's acceptance.
* National Environmental Policy Act does not apply.

NREPA Gains New Co-sponsors Including Key Rocky Mountain Rep.

The addition of five new cosponsors to H.R. 852, the Northern Rockies Ecosystem Protection Act (NREPA) brings the number of total cosponsors to forty-three. Reps. John Conyers (D-MI), Jerry Costello (D-IL), Robert Torricelli (D-NJ), Zoe Lofgren (D-CA) and Pat Schroeder (D-CO) joined their thirty eight colleagues in support of this key legislation which would protect 20 million acres in the Northern Rockies.

The addition of Pat Schroeder marks a milestone as she is the first Congressperson from the Rocky Mountain region to cosponsor the bill. Many other Western representatives have verbally expressed their support for NREPA but have yet to officially cosponsor.

NREPA was introduced in February 1995 and is currently awaiting hearings in the Agriculture and Resources Committees. There is support for NREPA among members of these key Committees but a potential problem is Rep Don Young (R-AK), Chairman of the Resources Committee. Young is an ardent anti-environmentalist, and we are hoping to overcome his opposition by gaining more support among members on the Resources Committee including the ranking minority member, Rep George Miller (D-CA).

There are many ways that people can help work for the passage of NREPA. The first way is to write letters to Congress (the bill number is H.R. 852). Also write to Don Young and George Miller and ask them to give NREPA a fair and open hearing. There are addresses for these representatives in the back of this *Networker.*

People should tell their family and friends about NREPA and encourage them to write letters. A good way to educate and get people involved is to show AWR's "Beyond Borders" video (available for $5). You can organize a letterdrive in your community. Letters of support from constituents can directly translate into cosponsorship.

If you have any questions or ideas about NREPA, please feel free to give us a call.

Bill Would Stop Yellowstone Mine

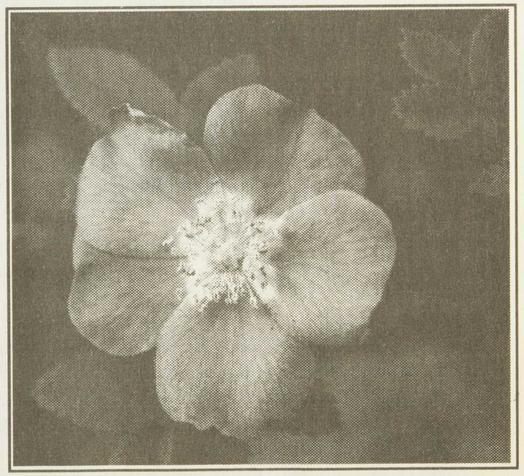
On June 14th, 1995 Representative Bill Richardson (D-NM) introduced a bill to establish the Yellowstone Headwaters National Recreation Area within the Gallatin and Custer National Forests adjacent to Yellowstone National Park. His bill, **H.R. 1846,** drew over 30 initial co-sponsors and national media attention.

The bill requires adoption of an area Management Plan as an amendment to the existing Forest Plans. Hunting and fishing, hiking, camping, snowmobiling and other types of recreation would be permitted, but developments would not, unless they were compatible with the purposes of the Act.

Most importantly, the bill would block development of the New World Mine, proposed by Crown Butte, a subsidiary of Noranda Minerals, Inc. It withdraws lands within the Recreation Area from the location and filing of new mining claims and the issuance of mineral leases or patents. It also prohibits "any mining or mining-related activity" on Federal lands within the Recreation Area, with the exception of reclamation of lands previously disturbed by mining.

Montana's Rep. Pat Williams (D) did not co-sponsor the bill, and called it "inappropriate," according to the Great Falls Tribune. The newspaper quoted Williams as saying the bill "will instead distract from other legitimate efforts to stop the mine."

Richardson's bill has been endorsed by the Beartooth Alliance, a local grassroots organization leading opposition to the mine, and also by the Greater Yellowstone Coalition. AWR supports it as well. Write your Representatives today!



Biodiversity protection begins with citizen action. Mark A. Wilson photo.