

Teller County Dept of Transportation

Brief Summary of Teller County RS2477 Assertion of Rights-of-Way

In 2003 State Senator Mark Udall introduced a bill H.R. 1639 that would have instituted regulations that would put more burden on Counties when identifying R.S. 2477 rights-of-way along with time constraints. Under Udall's bill, any R.S. 2477 claim not filed within four years would be considered abandoned. Although the bill was voted down, the Teller County Board of County Commissioners decided it would be in Teller County's best interest and well being to begin identifying and asserting R.S. 2477 rights-of-way in Teller County.

Last year the Teller County Board of County Commissioners directed Curt Logsdon, Teller County Department of Transportation Director, to review rights-of-way that qualifies for R.S. 2477 rights-of-way. Transportation decided to research R.S. 2477 rights-of-way in Teller County in several phases. The first phase was to identify all R.S. 2477 rights-of-way in Teller County north of State Hwy 24. The second and third phases would identify all remaining R.S. 2477 rights-of-way in Teller County south of Hwy 24.

R.S. 2477 was originally a law enacted as Section 8 of the Mining Act of 1866, granting right-of-way for the construction of highways over unreserved public lands. A law that was intended to promote and facilitate the settlement of the West and to legalize the construction of rights-of-way to support this settlement. This 1866 grant was reenacted and codified, in 1873 into section 2477, Revised Statutes of the U.S., more commonly known today as R.S. 2477 rights-of-way. This law grants rights-of-way for the construction of highways over unreserved federal lands. The exact language of the statute reads: **"The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted."**

R.S. 2477 was repealed in 1976 with enactment of Section 5 of the Federal Land Policy and Management Act (FLPMA). The purpose being to establish more comprehensive resource management framework for the BLM. However, FLPMA specifically states that all existing 2477 rights-of-way were not affected by this repeal and remained valid. No R.S. 2477 grants were or could be created after 1976, however, all of those created prior to that time were still valid property rights, meaning prior to 1976 any constructed rights-of-way across public lands not reserved for public use

were valid grants as public rights-of-way, which remain available for public use to this day.

In review for possible R.S. 2477 rights-of-way in Teller County, a search for public use reservations and their dates were researched. Public use reservation meaning a national forest, national park, military reservation or similar facility with its right-of-way existence predating the public reservation that is reserved for public uses. In the Northern area of Teller County historical data, numerous historical maps and dates of public reservation were found and used in identifying rights-of-way that met the criteria for R.S. 2477 grants.

On April 22, Transportation, presented the history of R.S. 2477 and identified some of the research completed so far in identifying valid R.S. 2477 rights-of-way. Thirty-three rights-of-way were identified in the northern part of Teller County meeting the criteria for valid R.S. 2477 grants. Of the 33 rights-of-way identified, 20 of them are currently State, County, City and Forest Service roads used by the public. The thirteen additional rights-of-way are partially used by the public.

After the April 22 presentation, Transportation was then directed to classify the identified R.S. 2477 rights-of-way. The purpose of the classifications were to provide typical classifications for R.S. 2477 rights-of-way in Teller County for the purpose of distinguishing R.S. 2477 rights-of-way for asserting, discussion purposes and general documentation. The rights-of-way were classified into 4 classes: Class A, Class B, Class C and unclassified.

After public discussion and comment regarding the various classes, Transportation recommended to the Teller County Board of County Commissioners that only "Class A" R.S. 2477 rights-of-way be asserted on the current identified rights-of-way. "Class A" R.S. 2477 rights-of-way being rights-of-way on public lands and rights-of-way on private lands currently used as public access to public lands. On the identified rights-of-way, by recommending only Class A rights-of-way, access to public lands would be adequate and private property would not be impacted.

On 05/27/04 the Teller County Board of County Commissioners passed a resolution asserting 37 R.S. 2477 rights-of-way. [Details of RS2477 Adopted Resolution](#)