

AMENDED R.S. 2477 INVENTORY PROTOCOL

Perfecting R.S. 2477 Assertions in Moffat County, Colorado

May, 2005

This R.S. 2477 Inventory Protocol is a general guideline for documenting R.S. 2477 rights of way in Moffat County. Each right of way assertion will be based on the facts and circumstances which apply to that road. This Protocol is not intended to supersede or modify in any way the claims by Moffat County to public roads that have previously been identified as public highways under R.S. 2477 and/or C.R.S. §43-1-202. This protocol applies to additional R.S. 2477 assertions made pursuant to this protocol.

Statement of Purpose: Perfect R.S. 2477 rights providing public access to public lands while protecting private property rights.

What is R.S. 2477? Revised Statute 2477 (R.S. 2477) is a simple one-sentence law that states, “The right-of-way for the construction of highways over public land, not reserved for public uses, is hereby granted.” This law was repealed in 1976 as part of the Federal Land Management Policy Act (FLPMA), however FLPMA preserved existing rights (i.e. R.S. 2477).

Method of Documenting R.S. 2477 Rights of Way (see Attachment A):

1. Building a Complete File for each R.S. 2477 Right of Way

- a) Assure route meets the definition of a Moffat County R.S. 2477 assertion
- b) Use numbers or letters to identify the right of way for future reference
- c) Identify the Moffat County category where the right of way should be placed
- d) Identify the physical location of the right of way
- e) Document the approximate date or year when the right of way came into existence
- f) Document the source that identifies the right of way
- g) Collect information pertaining to the public usage of the right of way e.g. trailing livestock, hunting, motorized recreation, mining, etc.
- h) Gather affidavits documenting public use
- i) Ground truth the right of way
(GPS, photographs)

2. Building a Partial File for each R.S. 2477 Right of Way

Steps “a” through “g” listed above are followed.

Steps “h and i” do not occur until a specific need is identified.

ATTACHMENT A: Description of Methods to Document R.S. 2477 Right of Ways:

Does the route meet the definition of Moffat County's R.S. 2477 assertion?

Moffat County's R.S. 2477 assertion **MUST**:

occur only on federal lands (i.e. Park Service, Forest Service, Bureau of Land Management, Fish and Wildlife Service); and
begin from a county road or a state highway; or
begin on federal land; and
end on federal land or a county road or state highway

Moffat County's R.S. 2477 assertion **WILL NOT** cross:

privately owned lands; or
State of Colorado owned lands;
unless the R.S. 2477 assertion is requested by the owner of the private lands or the State of Colorado and supported by all other private landowners whose property is crossed by the asserted R.S. 2477 right of way.

Nothing in an R.S. 2477 assertion shall interfere with the rights of other landowners, who have declared the roads through their land to be private roads.

Notwithstanding the above provisions, all roads that have been adopted by the Moffat County Board of County Commissioners through the annual acceptance of the Colorado Department of Transportation Mileage and Condition Certification Report are public roads.

Some Examples of Moffat County R.S. 2477 assertions:

- a) a right of way that leaves a county road, enters federal land, continues through federal land and returns to a county road meets Moffat County's R.S. 2477 assertion.
- b) a right of way that begins on federal land continues through federal land and ends on federal land meets Moffat County's R.S. 2477 assertion.
- c) a right of way that leaves a state highway or county road, enters federal land, and continues to private property meets Moffat County's R.S. 2477 assertion until the point at which the right of way leaves federal land and enters private land. At that point the Moffat County R.S. 2477 assertion ends.
- d) a right of way that leaves a state highway or county road, enters federal land, and continues to State of Colorado land meets Moffat County's R.S. 2477 assertion until the point at which the right of way leaves federal land and enters State of Colorado land. At that point the Moffat County R.S. 2477 assertion ends.
- e) where a landowner has requested an R.S. 2477 assertion be made across his/her private property, a right of way that leaves a state highway or county road, enters private land, continues to federal land, and ends on federal land, a state highway, or a county road, meets Moffat County's R.S. 2477 assertion.
- f) where the State of Colorado has requested an R.S. 2477 assertion be made across its State of Colorado property, a right of way that leaves a state highway or county road, enters State of

Colorado land, continues to federal land, and ends on federal land, a state highway, or a county road, meets Moffat County's R.S. 2477 assertion.

Identifying the Right of Way

Long-Range Identification Method:

A numbering method of individual identification of all Moffat County R.S. 2477 assertions shall be determined as assertions are placed on Geographic Information Systems (GIS). Individual right of ways will likely be identified utilizing a similar method as the existing county road numbering system.

Identification Method for LUB Members:

During Land Use Board discussions, as right of ways are identified, any numbering scheme is acceptable as long as the reader can reference the R.S. 2477 drawn on a map with the data sheet containing information about that R.S. 2477. For example, a RS 1,2,3.... numbering scheme is sufficient for Land Use Board members to document R.S. 2477 right of ways on maps and data sheets. If a right of way spur from a documented R.S. 2477 right of way that spur can be identified by adding letters behind the right of way number. For example, if two right of ways spur from right of way number RS 31, they may be labeled RS 31a and RS 31b.

Documenting the Category of the Rights of Way

The below described categories are not intended to provide a detailed description of the right of way, simply a typical classification to place the right of way for general documentation and discussion purposes.

Categories:

State Highway:	recognized by State Highway road numbers.
County Road:	recognized by Moffat County road numbers.
Dirt:	Vegetation has been mechanically removed to bare soil. Some vegetation regrowth may occur depending on the age of the right of way or time since last maintained.
Two-Track:	Vegetation is generally absent on each vehicle track and present between vehicle tracks.
ATV:	Generally the same as Two-Track with approximately four feet distance between tracks. Single track motorcycle tracks fit the ATV category.
Livestock:	Generally single-track right of ways used for public access.
No Physical Evidence:	The existence of a right of way can be proven despite a lack of current maintenance or use.

Location of Rights of Way

The location of routes will document the location on maps and may be placed in a Geographic Information System (arcview) with a variety of background layers available such as 1:24000 topographic maps, aerial photos, etc. In cases where a complete file is required to document a right of way a Global Positioning System (GPS) may be used to document the exact location of the right of way. In situations where it is deemed a partial file is required to document a right of way, drawing on 1:24000 USGS maps shall locate the right of way. When possible and estimated width of the right-of-way should be documented.

Photographing Right of Ways

In cases where a complete file is required to document a right of way a digital camera will be used along with GPS points to document the right of way.

In cases where it is deemed a partial file is required to document a right of way, existing photographs will be included and if convenient or appropriate, additional photographs will be added.

Document the Uses of the Rights of Way

Documentation of the uses for which the right of way was established and currently being used is crucial to defending an R.S. 2477 assertion.

- 1) Documenting the use of a right of way with a partial file:

In cases where partial files are needed to document an R.S. 2477 right of way, a simple phrase or sentence can reveal the general use of roads. The following are examples of phrases that can be used to document the use of a right of way:

- connects road "a" with road "b"
- motorcycle route for recreational use
- access to cabin
- maintenance of barbed wire fence
- access to hang gliding launch pad
- access to water reservoir
- access to windmill
- access to scenic overlook
- alternative route to "a" during heavy snow

If available, any anecdotal explanation or discussion of the public uses should also be included. For example, if the use is "access to cabin" then any information about the owner of the cabin, when it was built, and whether it was originally part of a ranch or homestead should be included.

2) Documenting the use of an R.S. 2477 right of way with a complete file:

In addition to the above information affidavits detailing the use of a road in detail beyond a phrase or short sentence is necessary. Affidavit samples are currently being gathered.

Document the source for information

Published or mapped routes:

Provide a name, date, and publisher of the map, or other sources from where the information about an R.S. 2477 route was gathered.

Unpublished routes:

List the names and contact information for those providing information about R.S. 2477 routes at any given meeting. If appropriate, place the initials of the specific person that provided information about an R.S. 2477 route.