

To be inserted in Chapter 1, pages 1-5 – 1-6:

[Existing Chapter 1 language]

Issue 3: Transportation and Travel Management:

Often the BLM views travel management together with recreation, as recreation is the primary activity associated with travel management. Recreational activities occur throughout the area and include motorized and non-motorized vehicle touring, big and small game hunting, backpacking, horseback riding, hiking, mountain bike use, sight-seeing, pleasure driving, and off-highway vehicle use by motorcycles, all-terrain vehicles (ATVs), and full size four-wheel drive vehicles such as jeeps and sport utility vehicles (SUVs). Increased OHV use and non-motorized visitation over the years in areas such as Sand Wash Basin have led to increased concerns regarding resource protection and conflicting uses.

Other land management activities are also associated with travel management, such as oil and gas exploration and range management. Use and proliferation of roads is one of the biggest contributors to resource impacts and user conflicts.

[Insert new language below existing paragraphs]

Another issue related to travel management is R.S. 2477. Revised statute 2477 (R.S. 2477) states, in its entirety, "The right-of-way for the construction of highways over public lands not reserved for public uses is hereby granted" (Act of July 26, 1866, Chapter 262, § 8, 14 statute 251, codified in 1873 as Section 2477 of Revised Statutes, recodified in 1938 as 43 U.S.C. § 932). Sec. 706 of The Federal Land Policy and Management Act (FLPMA) of 1976 repealed R.S. 2477, but also stated that right-of-ways existing when the Act was approved are not affected. FLPMA did not address, however, the procedures to be followed with respect to recognition of pre-1976 R.S. 2477 rights-of-way. When DOI proposed regulations that would address recognition of such rights-of-way, Congress enacted a moratorium, which DOI recognized in January 1997.

On January 10, 2003 the Moffat County Commissioners identified rights-of-way across federal lands into the County's road system. A map of Moffat County's assertions is provided in Chapter 3 on p. [X](#).

The BLM recognizes that R.S. 2477 assertions are made by Moffat County and that many of these routes existed before 1976, on public lands that were unreserved. The authorizing authority for many of these roads may well be R.S. 2477; however, the 1997 DOI policy moratorium limits BLM's ability to process R.S. 2477 right-of-way claims. However, the United States Court of Appeals for the Tenth Circuit in *Southern Utah Wilderness Alliance v. Bureau of Land Management (SUWA v. BLM)*, 425 F.3d 735 (10th Cir. 2005) expressly authorized BLM to make non-binding determinations concerning the validity of R.S. 2477 claims for its own planning purposes.

In *SUWA v. BLM*, Tenth Circuit Court of Appeals September 9, the Tenth Circuit stated that BLM does not have authority to adjudicate an R.S. 2477 ROW nor can BLM impose federal rather than state law criteria when evaluating an R.S. 2477 right-of-way claim. The Tenth Circuit concluded that, "Federal law governs the interpretation of R.S. 2477, but that in determining what is required for acceptance of a right-of-way under the statute, federal law 'borrows' from long-established principals of state law, to the extent that state law provides convenient and appropriate principals for effectuating congressional intent" (*SUWA v. BLM*, 25 F.3d at 768). Importantly, as stated above, the Tenth Circuit also recognizes that BLM could make a non-binding administrative determination on the validity of an R.S. 2477 claim for its own planning purposes.

As such, the RMP is not the venue to resolve the R.S. 2477 issue, but transportation and access issues will be addressed in the RMP/EIS and impacts of travel management decisions on resource uses and motorized access will be disclosed. Potential conflicts may exist between BLM planning decisions and R.S. 2477 assertions to different degrees in the different management alternatives. See Chapter 4 for an analysis of which R.S. 2477 assertions conflict with proposed management in each alternative.

The LSFO has assured the Moffat County Commissioners that the RMP/EIS will acknowledge the existence of the R.S. 2477 assertions, and that the RMP/EIS decisions are subject to valid existing rights. Valid existing county rights-of-way are not subject to BLM closures, so if some or all of the R.S. 2477 assertions were to be recognized as valid, routes that were closed in the RMP would become open to vehicle travel, making these routes available to vehicle use. This could change the character of the area, including but not limited to the recreation experience, which ultimately could result in a change in management if vehicle use were inconsistent with the management objectives described in the RMP for that area. Alternative B provides the least potential conflict with Moffat County's R.S. 2477 assertions, while Alternative D offers the most potential conflict.

Transportation planning is not part of the RMP but will take place subsequent to the signing of the Record of Decision. Close cooperation with Moffat County during Transportation planning will be required to address any specific issues that might arise from Transportation planning. These discussions will focus on attempting to resolve issues surrounding individual routes in the planning area.

Chapter 3, section 3.2.6: Transportation and Access, page 3-143:

[Make these changes to current language]

Moffat County has been active in the RS 2477 debate and has established an inventory protocol (June 2002), a maintenance protocol (January 10, 2003), a map showing their RS 2477 assertions (January 10, 2003), and established stipulations in Moffat County Resolution 2003-05 (<http://www.co.moffat.co.us/NaturalResources/rightsofway.htm>). The LSFO is unaware of any RS 2477 assertions for the RMPPA in Routt or Rio Blanco Counties at this time. ~~Resolution of RS 2477 assertions is a legal issue beyond the scope of this RMP, but the LSFO continues to be very aware of the position of Moffat County on the issue.~~

Chapter 4, section 4.4.6: Effects to Transportation and Access, beginning page 4-163:

[Under each alternative, include this language and a map]:

Map X portrays R.S. 2477 asserted routes which conflict with proposed management in Alternative X.

[Map overlays areas Closed to OHVs with R.S. 2477 assertions in those areas].