



*"Serving Western Legislatures"*

## RESOLUTION 98-4

### ***Public Access Rights Across Federal Public Lands***

*Supporting State and Local Government Legal Actions  
Exercising Public Access Rights Across Federal Public Lands  
Granted to the States under Revised Statute 2477 Dealing with Rights-Of-Ways*

Introduced by the Energy and Minerals Committee

WHEREAS, federal lands make up a significant portion of the land base in the western United States; and

WHEREAS, access across federal lands is critical to the continued viability and economic stability of the western states; and

WHEREAS, Revised Statute 2477 was an access right granted by Congress to the states with the enactment of Section 8 of the Mining Law of 1866; and

WHEREAS, the original provisions of R.S. 2477 provided for, and guaranteed, the public's right to establish access across federal lands; and

WHEREAS, R.S. 2477 provided that the creation and administration of R.S. 2477 rights-of-way would be in accordance with applicable state laws; and

WHEREAS, when the Federal Land Policy and Management Act of 1976 repealed R.S. 2477, it specifically acknowledged the legal existence and continuance of R.S. 2477 rights-of-way established prior to the repeal; and

WHEREAS, numerous legal cases and previous federal administrative policies and regulations have acknowledged the existence of R.S. 2477 rights-of-ways and the rights of the states and local municipalities to exercise their legal rights to these rights-of-ways; and

WHEREAS, Congress has repeatedly reaffirmed the intent of the original R.S. 2477 rights-of-way grants; and

WHEREAS, the present federal administration has taken actions to adopt conflicting R.S. 2477 policies regulations which would essentially severely restrict the previous access rights granted to the public; and

WHEREAS, in 1997 the Secretary of Interior revoked the 1988 Department of Interior policy regarding R.S. 2477 rights-of-way; and

WHEREAS, the 1997 policy adopted by the Secretary is inconsistent with established law and violates existing Department of Interior regulations regarding R.S. 2477 rights-of-way; and

WHEREAS, Congress passed a permanent moratorium in the 1997 Appropriations Act which specifically prohibits the enactment of any new R.S. 2477 regulations without Congressional approval; and

WHEREAS, federal agencies have essentially ignored the intent of Congress and their own regulations and are implementing conflicting administrative actions denying public access without the approval of Congress; and

WHEREAS, there are existing and ongoing legal battles over R.S. 2477 rights-of-way which are extremely important to all of the western states because of their legal precedence; and

NOW, THEREFORE, BE IT RESOLVED that CSG-WEST (Council of State Governments-WEST, Serving Western Legislatures) will take action to file briefs as *amicus curiae* at appropriate points on the currently ongoing lawsuits in Utah, i.e., *United States of America v. Garfield County*, Civil No. 2:96-CV-0450J, and *Southern Utah Wilderness Alliance et al. v. Bureau of Land Management, et al.*; *United States of America, v. San Juan County, Utah, et. al.*, Civil No. 2:96-CV-0836S, both in the United States District Court, District of Utah, Central Division, to represent the interests of all western states in the proper and appropriate management of the state and local transportation systems, insofar as those systems may be comprised of R.S. 2477 rights-of-way, including a focus on established principles of law which provide for state sovereignty over state owned property and the practical necessities of adhering to those principles; and

BE IT FURTHER RESOLVED that CSG-WEST will take action to alert the Congress of the United States regarding the actions taken by the National Park Service, the Bureau of Land Management and the Justice Department in the litigation in Utah, and, where appropriate, other agency actions, alerting the Congress to actions which are deemed in violation of the currently published regulations of the Department of Interior concerning R.S. 2477 rights-of-way (43 C.F.R. § 2801.4) and of Congress's moratorium against agency rulemaking (Pub. L. 104-208, Div. A, Title I, § 101 (d) [Title I, § 108], Sept. 30, 1996 110 Stat. 3009-200; 43 U.S.C. § 932, Savings Provisions) and adverse to the states' sovereignty interests and the public interest in a safe transportation system.

Copies of this resolution shall be sent to the Honorable Janet Reno, U.S. Attorney General; the Honorable Bruce Babbitt, U.S. Secretary of the Interior; the Honorable Congressmen from each western state, the Honorable Senators from each western state and the Honorable Governors from each western state.

***ADOPTED BY THE CSG-WEST EXECUTIVE COMMITTEE ON SEPTEMBER 22, 1998  
ASSEMBLED IN ANNUAL MEETING IN ANCHORAGE, ALASKA.***