

PUBLIC LANDS

Interior paves way for transfer of roads to states

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Published: Tuesday, November 12, 2019



Conservationists worry about the federal government's transfer of primitive roads in Utah to the state. An Errant Knight/Wikimedia Commons

This story was updated at 2:23 p.m. EST.

The Interior Department is weighing whether to cede a 10-mile stretch of gravel road in Utah to state control, and conservationists worry a favorable decision could trigger an avalanche of similar requests — and a potential loss of public lands access.

In a [notice](#) in the *Federal Register* on Friday, Interior revealed it would open a 30-day review of control of Manganese Road in southwest Utah.

Nearly all of the 10.18-mile thoroughfare sits on lands governed by the Bureau of Land Management. Interior's approval would give control of the right of way — including maintenance and improvements — to state and local officials.

But conservationists warn that the Manganese Road could be a test case for Utah, which has long disputed control of more than 14,000 rights of way covering some 35,000 miles in the state.

"If the state of Utah succeeds with this first disclaimer it has thousands of similar claims blanketing Utah's redrock country waiting in the wings," Southern Utah Wilderness Alliance Legal Director Stephen Bloch said in a statement.

In an interview with E&E News, Bloch noted that Utah's disputes over roadways stem in part from objections to federal wilderness protections.

"The Interior Department is going to give away the public's interest to state and county [officials] whose intent is to improve — if not ultimately to pave — this very dense network of roads," Bloch said.

In fact, Utah is currently a plaintiff in nearly two dozen lawsuits in the U.S. District Court for the District of Utah regarding those thousands of rights of way.

State officials base their claims on a provision in the 1866 Mining Act, known as Revised Statute 2477. Although the law was repealed in 1976, Congress grandfathered in valid rights of way that existed at that time.

That means state and local officials seeking recognition of rights of way under R.S. 2477 have to prove through historical and maintenance records, photos or testimony that the roads were in use at least through the 1960s.

While the legal battle over R.S. 2477 claims moves through the federal court — a bellwether case focused on 15 disputed rights of way in Kane County, Utah, is set for February — Bloch described the state's application for Manganese Road as an "administrative shortcut."

"The state of Utah has been after this since day one of this administration," Bloch asserted. "It's taken time to get the attention of the Interior Department."

The state is seeking to claim control of the road via BLM's "recordable disclaimer of interest," or RDI, process, which allows the Interior secretary to give up the federal government's right to a roadway or trail.

Although Utah officials attempted to move similar claims in the early 2000s, the efforts ultimately faltered ([E&E Daily](#), Sept. 17, 2004).

"The state of Utah's track record on these disclaimers of interest has been bad," said Kristen Brengel, senior vice president for the National Parks Conservation Association.

The 2003 push for a Juab County road known as Weiss Highway — intended to be the model for additional rights-of-way claims on historic thoroughfares — failed when records surfaced showing that Interior had actually constructed the road in the 1930s.

"It's a shame, because I thought things might be changing over at Interior, but this move could have catastrophic consequences on public lands if they continue to move forward with it," Brengel added.

"We're actually not just talking about Utah here," she said, noting RDI claims in public lands across the Beehive State as well as California, Colorado and Alaska. "There's a reason for people to be very concerned about where this could go."

Following publication of this article, BLM spokeswoman Lola Bird told E&E News that no decision has been made on Manganese Road and the public comment period remains open through Dec. 9.

"Recordable disclaimers of interest are an administrative tool that the BLM may use when working with state and local governments to resolve long-standing issues related to the use, maintenance and improvement of historic right of ways on public lands," Bird said.

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