

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. RES. 288

To request that the Secretary of the Interior withdraw proposed regulations concerning rights-of-way granted under section 2477 of the Revised Statutes, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 1 (legislative day, SEPTEMBER 12), 1994

Mr. HATCH (for himself, Mr. STEVENS, Mr. BURNS, Mr. BENNETT, and Mr. MURKOWSKI) submitted the following resolution; which was referred to the Committee on Energy and Natural Resources

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## RESOLUTION

To request that the Secretary of the Interior withdraw proposed regulations concerning rights-of-way granted under section 2477 of the Revised Statutes, and for other purposes.

Whereas in 1866 Congress established, through section 2477 of the Revised Statutes, a procedure for granting rights-of-way across unreserved public lands to local governments to ensure reasonable access by the public to and across public lands and resources;

Whereas thousands of valid rights-of-way were conveyed to State and local governments through this mechanism until the statute was repealed by section 706 of the Federal Land Policy and Management Act of 1976 (Public Law 94-579);

Whereas section 701 of the Federal Land Policy and Management Act of 1976 (Public Law 94-579; 43 U.S.C. 1701 note) recognized and protected all valid existing rights-of-way granted under section 2477 of the Revised Statutes (43 U.S.C. 932 note);

Whereas those rights-of-way are valid property rights held in trust for the public by State and local governments;

Whereas those rights-of-way continue to be critical to ensuring access to and across public lands;

Whereas the Secretary of the Interior proposed a rule on August 1, 1994 (59 Fed. Reg. 39216), to address rights-of-way across lands now administered by the Bureau of Land Management, the National Park Service, and the United States Fish and Wildlife Service;

Whereas there is an established body of case law, legislative history, historical precedents, and departmental decisions that does not appear to be reflected in the proposed rule of the Department of the Interior affecting those rights-of-way;

Whereas the proposed rule would substantially conflict with existing law and congressional intent regarding the scope and future administration of those rights-of-way and impose an excessive burden on State and local governments to legitimize all right-of-way claims, including those already validated by an appropriate Federal agency or a court;

Whereas the established public comment process outlined in the proposed rule, including the subsequent extension periods, is inadequate to address the many fundamental problems raised by the rule; and

Whereas the proposed rule seeks to exceed the authority granted to the Department of the Interior under the Constitution, through political and legal precedent, and by Executive order: Now, therefore, be it

1       *Resolved*, That the Senate requests that the Secretary  
2 of the Interior—

3           (1) immediately withdraw the proposed rule re-  
4 garding rights-of-way granted under section 2477 of  
5 the Revised Statutes (43 U.S.C. 932 note) published  
6 in the Federal Register of August 1, 1994; and

7           (2) reissue the proposed rule for public review  
8 and comment, only after—

9           (A) consulting with the Committee on En-  
10 ergy and Natural Resources of the Senate and  
11 the Committee on Natural Resources of the  
12 House of Representatives; and

13           (B) revising the proposed rule to ade-  
14 quately reflect and comply with all pertinent  
15 laws, Executive orders, rules, and historical and  
16 legal precedent.

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