

APPENDIX B

SUGGESTED NOTICE OF RS 2477 CLAIM

The following notice is based largely on notice claims used by the State of Utah in settling its RS 2477 rights-of-way. As the law presently stands, Wyoming has not decided which government entities are responsible for settling its own RS 2477 claims, but gives great deference to county commissions. Under current law, county commissions could modify and implement a notice system based on the language below and customized to its particular needs. Ideally, were Wyoming to pass more rigorous RS 2477 provisions, as is provided for later in this appendix, enhanced coordination statewide would exist to settle these claims.

_____ County
The State of Wyoming

Acknowledgement and Notice of Acknowledgement
of Acceptance of R.S. 2477 Right-of-Way Grant

Know ye, this is an Acknowledgment and Notice of Acknowledgment made under Wyoming law that the grant of the United States of America of "the right of way for the construction of highways over public lands, not reserved for public uses" under U.S. Revised Statutes 2477 (43 U.S.C. Section 932) has been accepted for and on behalf of the State of Wyoming and its political subdivision _____ as it pertains to the highway located in -----
_____--- County known as _____. Total road length is _____ miles more or less.

The reason for this Acknowledgement and Notice of Acknowledgment includes, but is not limited to, the fact that the road was constructed, mechanically, or by continuous use as a public highway for a period of at least ten years, over public lands not reserved for public uses, prior to either: (a) the October 21, 1976 repeat of R.S. 2477, or (b) the date the servient estate was reserved for public uses. The road in question provides access to either a private residence or agricultural operations.

This Acknowledgment and Notice of Acknowledgment applies only to segments of the road that traverse land owned by the Bureau of Land Management, United States Department of the Interior, and does not apply to segments of the road that traverse any land owned by any other person or entity. The State of Wyoming and its political subdivisions reserve the right to make further acknowledgements and notices of acknowledgement with regard to road segments that traverse land owned by other federal entities.

A printed copy of a map showing the location of the road in said county is appended hereto as "Attachment 1," a printed copy of representative photographs of the road is appended here to as "Attachment 2," a printed copy of a description of the beginning and ending points of the entire road together with a list of Townships, Ranges, and Sections that may be traversed by the road in said county is appended here to as "Attachment 3," and a printed copy of the Road Centerline Description Cover Page(s) is appended here to as "Attachment 4." Affidavits provided by individuals familiar with the road are appended here to as "Attachment 5."

A printed copy of this Acknowledgement and Notice of Acknowledgement, along with its attachments, may be viewed or obtained at _____ office. An electronic copy of this Acknowledgement and Notice of Acknowledgement, along with its attachments, may be viewed or downloaded through the Internet at: _____.

The owner of the servient estate in the land underlying the road segments subject to this Acknowledgment and Notice of Acknowledgment is believed to be the United States of America through one or more of its agencies. Any of such agencies or any other person with a servient ownership claim or a competing dominant estate right of way ownership claim may file a petition in a state district court for a decision concerning the validity of this Acknowledgement. Any such claimant shall file a petition within sixty (60) days after receipt of this notice.

In witness whereof, I _____, acting in my capacity for the _____ County Commission, in conformity with the laws of the State of Wyoming (W.S. Section 24-1-101), and in compliance with _____ County's ordinances, have caused this Acknowledgment and Notice of Acknowledgement to be made.

Signed by my hand in _____, Wyoming, this _____ day of _____, 20____

Notary Certification

Suggested Statutory Language to Implement R.S. 2477 Exchanges

Wyoming Statute 1.1 Agreements affecting R.S. 2477 rights-of-way.

- 1) County Commissions are the responsible for determining the validity of R.S. 2477 rights-of-way within their geographical boundaries. Counties may enter into an agreement with the federal government affecting the rights, status, or scope of an R.S. 2477 right-of-way without interference from any political subdivision of the state.
- 2) The State of Wyoming need not be a party to any agreement between a political subdivision of the state and the federal government that affects the interests of R.S. 2477 rights-of-way.

Wyoming Statute 1.2 R.S. 2477 Rights of Way Act

- 1) County Commissions, or their designees, may assess whether the grant of R.S. 2477 has been accepted with regard to any right-of-way so as to vest title of the right-of-way in the state and the applicable political subdivision.
- 2) If the County Commission or its designee concludes that the grant has been accepted as to any right-of-way, the County Commission or a designee shall issue a notice of acknowledgment of the acceptance of the R.S. 2477 grant as to that right-of-way.
- 3) A notice of acknowledgment of the R.S. 2477 grant shall include:
 - a) a statement of reasons for the acknowledgment;
 - b) a general description of the right-of-way or rights-of-way subject to the notice of acknowledgment, including the county in which it is located, and notice of where a center-line description derived from Global Positioning System data, if available, may be viewed or obtained;
 - c) a statement that the owner of the servient estate in the land over which the right-of-way or rights-of-way subject to the notice runs or any person with a competing dominant estate ownership claim may file a petition with the district court for a decision regarding the correctness or incorrectness of the acknowledgment; and
 - d) a statement of a sixty (60) day time limit provided for filing a petition.
- 4) Recording
 - a) The County Commission or its designee may record a notice of acknowledgment, and any supporting affidavit, map, or other document purporting to establish or affect the property interest in the right-of-way or rights-of-way, in the office of the county recorder in the county where the right-of-way or rights-of-way exist.
 - b) Requirements
 - i) A notice of acknowledgment recorded in the county recorder's office is not required to be accompanied by a paper copy of the center-line description.

- ii) A paper copy of each center-line description together with the notice of acknowledgment shall be placed in the County Recorder's Office and made available to the public upon request.
 - iii) An electronic copy of the center-line description identified in a notice of acknowledgment shall be available upon request at the county's recorder office.
- c) A notice of acknowledgment recorded in the county recorder's office is conclusive evidence of acceptance of the R.S. 2477 grant upon:
- i) expiration of the 60-day period for filing a petition; or
 - ii) a final court decision that the notice of acknowledgment was not incorrect.

Wyoming Statute 1.3 Notice of Acknowledgement

72-5-310. Notice of Acknowledgment -- Court Determination -- Presumption of Acceptance.

- 1) The County Commission or its designee shall provide a copy of the notice of acknowledgment by certified mail and return receipt requested to:
 - a) the last known owner of the servient estate in land over which the right-of-way or rights-of-way subject to the notice runs; and
 - b) any person known to have a competing dominant estate ownership claim.
- 2) Filing
 - a) A person with a servient estate or competing dominant estate ownership claim to the right-of-way may petition for a decision of the district court as to the correctness of the acknowledgment of acceptance of the R.S. 2477 grant issued.
 - b) The petition shall be filed no later than 60 days after the date on which the petitioner received a copy of the notice of acknowledgment.
 - c) The state, through the County Commission or its designee, shall be named as a respondent and served with a copy of the petition in accordance with the Wyoming Rules of Civil Procedure.
 - d) No one other than a person with a servient estate ownership claim in land over which the right-of-way or rights-of-way subject to the notice runs or a competing dominant estate claim may challenge the correctness of a notice of acknowledgment.
- 3) The petition for a court decision of the correctness of the notice of acknowledgment shall be a complaint governed by the Wyoming Rules of Civil Procedure and shall contain:
 - a) the petitioner's name and mailing address;
 - b) a copy of the notice of acknowledgment the petitioner asserts is incorrect;
 - c) a request for relief specifying the type and extent of relief requested; and
 - d) a statement of the reasons why the petitioner is entitled to relief.

- 4) Except as provided under Section 3, all pleadings and proceedings to determine the correctness of a notice of acknowledgment in the district court are governed by the Wyoming Rules of Civil Procedure.
- 5) The court shall make its decision without deference to the notice of acknowledgment.
- 6) Burden of Proof
 - a) In accordance with the law, a rebuttable presumption that the R.S. 2477 grant has been accepted is created when:
 - (i) a highway existed on public lands not reserved for public uses as of the cut-off date; and
 - (ii) the highway currently exists in a condition suitable for public use.
 - b) The proponent of the R.S. 2477 status of the highway bears the burden of proving acceptance of the grant by a preponderance of the evidence for all decisions that are not subject to Subsection (6)(a).