



*“Voice of the Western Slope since 1953”*

*A coalition of counties, communities, businesses & individuals*

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**03 – 9 PL 1**

**R.S. 2477, RIGHTS-OF-WAY OVER PUBLIC LANDS**

**WHEREAS** Congress, for the purpose of promoting the settlement of the western United States by establishment of highways, granted a right-of-way for the construction of highways over public lands, not reserved for public uses in Section 8 of the Mining Act of 1866, reenacted and recodified as Revised Statutes 2477 (R.S. 2477), 43 U.S.C. §932 (repealed Oct. 21, 1976); and

**WHEREAS** the above-mentioned right to pass across public lands, except those withdrawn from public use, effected a grant, which was accepted whenever and wherever roads and ways were established over unreserved federal land by construction or otherwise and were available for public use, and these public highways remain available to this day for public use; and

**WHEREAS** Secretary of Interior, Gale Norton, negotiated a Memorandum of Understanding for Acknowledging R.S. 2477 Rights-of-Way in Utah in 2003; and

**WHEREAS** identifying, asserting, maintaining and protecting these rights-of-way is necessary to protect the counties social and economic resources and to promote public health and safety, including but not limited to, search and rescue, fire protection, health and law enforcement, and other emergency services; and

**WHEREAS** local jurisdictions (i.e. counties) may set policy regarding the inventorying, maintenance and abandonment of roads, including R.S. 2477 Rights-of-Way, in manners which protect or enhance each local jurisdiction’s socio-economic status, customs and cultures;

**THEREFORE BE IT RESOLVED** that CLUB 20 recommends a policy be issued by the Secretary of Interior to acknowledge R.S. 2477 Rights-of-Way throughout Department of Interior managed lands and Tribal (Indian reservation) lands; however, in the absence of a policy, CLUB 20 recommends a contract with the State of Colorado to provide the conduit to acknowledge R.S. 2477 Rights-of-Way; and

**BE IT FURTHER RESOLVED** that CLUB 20 supports R.S. 2477 Rights-of-Way being defined by locally derived and supported R.S. 2477 Inventory, Maintenance and Abandonment Protocols established by way of thorough public input processes. R.S. 2477 Rights-of-Way may include, but are not limited to, pedestrian trails, horse paths, livestock trails, wagon roads, jeep trails, logging roads, homestead roads, mine-to-market roads, alleys, tunnels, bridges, dirt or gravel roads, paved roads and all other ways, and their attendant access for maintenance, reconstruction and construction; and

**BE IT FURTHER RESOLVED** that R.S. 2477 Rights-of-Way exist and CLUB 20 recognizes them on all Department of Interior and U.S. Forest Service managed lands as well as those crossing Tribal lands, so long as the right-of-way existed prior to reservation of these lands or at the repeal of R.S. 2477 by the Federal Land Policy and Management Act of 1976; and

**BE IT FURTHER RESOLVED** that CLUB 20 recognizes the mere use by the public of a right-of-way constitutes construction of that right-of-way. Bulldozers, graders or other forms of mechanical maintenance are not necessary for the construction or maintenance of an R.S. 2477 Right-of-Way; and

**BE IT FURTHER RESOLVED** that the width of a right-of-way is determined by a reasonable and necessary standard regarding the use of a given route. CLUB 20 acknowledges a county's right, title and interest in R.S. 2477 Rights-of-Way including the right to evaluate and perform construction, reconstruction and maintenance that is reasonable and necessary for safe passage; and

**BE IT FURTHER RESOLVED** that CLUB 20 recommends the cost of processing R.S. 2477 assertions be borne by those processing the assertions (i.e., federal agencies) or those challenging the assertions. CLUB 20 acknowledges that, once the public established a road or trail, it became the public's vested right and the burden of processing or formally recognizing these vested rights should fall upon the agency or organization that must implement regulations to address the long existing rights; and

**BE IT FURTHER RESOLVED** that CLUB 20 recognizes it is generally not necessary to identify the exact meets and bounds or a centerline of an R.S. 2477 Right-of-Way to map its existence. Generally government maps, aerial photos, affidavits or photographs represent the physical location necessary to document the existence of a right-of-way; and

**BE IT FURTHER RESOLVED** that CLUB 20 urges DOI (and USDA) to implement a simple and reasonable process, including reasonable opportunity for and consideration of public review and comment consistent with DOI policy, for issuing a non-binding determination (NBD) on RS-2477 claims so that firm evidence of rights-of-way (ROW) existing prior to 1976 (i.e. aerial photos, government maps, and maintenance records) shall be sufficient to establish such an NBD in the affirmative; and

**BE IT FURTHER RESOLVED** that CLUB 20 urges all DOI agencies and the USDA (and their respective agencies) to promulgate rules for the processing of RS-2477 claims consistent with DOI policy (including the prescribed public input process), and encourages the USDA and DOI (and their respective agencies) to work together to coordinate RS-2477 claims for consistent and timely decisions.

*Adopted 9/5/03*

*Amended 9/8/06*