

RESOLUTION
98-7

WHEREAS, the United States Congress, intending to promote the settlement of the western United States by establishment of highways, granted the 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; and

WHEREAS, Daggett County accepted rights-of-way under the grant offered under R.S. 2477 in various instances through public use, County construction or maintenance of the rights-of-way or other action establishing the County's intent to accept the offer contained in R.S. 2477; and

WHEREAS, the County and the public relied upon the terms of the offer, as established by the common law of statutory construction, federal regulations since at least 1938, federal statements of policy, and numerous rulings of state and federal courts which have addressed the terms of the offer contained in R.S. 2477, in accepting and administering the granted rights-of-way; and

WHEREAS, these rights-of-way are essential to the County's transportation and public access systems and the public has relied on and continues to rely on them since prior to October 21, 1976; and

WHEREAS, search and rescue, resource management, fire protection, health and law enforcement personnel rely on these access routes to carry out important public functions; and

WHEREAS, public access to routes of travel are essential to the economic, social and political well-being of the communities within the County; and

WHEREAS, these rights-of-way are important to the free flow of commerce in the United States; and

WHEREAS, the federal government owns approximately ___% of the lands in the County; and

WHEREAS, the United States is the owner of the servient estate traversed by rights-of-way accepted by the County pursuant to the grant offered in R.S. 2477; and

WHEREAS, the regulatory powers of the United States are limited by the obligation to honor valid existing rights, including the rights-of-way accepted pursuant to the grant offered under R.S. 2477; and

WHEREAS, other property owners may have succeeded the United States as owner of the servient estate traversed by rights-of-way accepted by the County pursuant to the grant offered in R.S. 2477 and the rights of those property owners in the servient estate is limited by the obligation to honor the rights-of-way accepted by the public pursuant to the grant offered under R.S. 2477; and

WHEREAS, the County is, and has been since its creation, responsible under state law to provide a safe transportation system for the traveling public and to support the local economy, custom and culture; and

WHEREAS, the County's right, title and interest in these rights-of-way includes the right to perform construction and maintenance which is reasonable and necessary for safe passage for the uses established prior to the repeal of R.S. 2477 or the reservation of the lands for public use, as those uses may increase over time, based upon currently-applicable safety standards; and

WHEREAS, the rights-of-way accepted pursuant to the grant offered under R.S. 2477 have not been abandoned or waived except where formal procedures provided under state law have been followed; and

WHEREAS, it is the policy of the County to ensure that all rights-of-way accepted pursuant to the grant offered under R.S. 2477 be retained in perpetuity for the use and benefit of the public unless abandoned in accordance with applicable law.

NOW, THEREFORE, BE IT RESOLVED, as follows:

I. DEFINITIONS:

As used in this resolution:

A. "Acceptance," "acceptance of a right-of-way for the construction of a highway over public lands, not reserved for public uses," or "accepted" means one or more of the following acts prior to the end of the acceptance period.

1. by the County or person with the intention of creating a public highway over public lands:

- a. construction or maintenance of a highway;
 - b. inclusion of the right-of-way in a state, county, or municipal road system, plat, description, or map of county roads;
 - c. expenditure of any public funds on the highway;
 - d. execution of a memorandum of understanding or other agreement with any other public or private entity or an agency of the federal government that recognizes the right or obligation of the County to construct or maintain the highway or a portion of the highway; or
 - e. any other act by the County consistent with state or federal law indicating acceptance of a right-of-way; or
2. use by the public for the period required by Section 27-12-89 or prior state law.
- B. "Acceptance period" means any time before October 21, 1976, during which the lands traversed by any highway were not reserved for public use.
- C. "Accepted uses" means any uses which occurred during the acceptance period.
- D. "Construction" means any physical act which creates a new road bed or otherwise makes a highway ready for use by the public according to the available or intended mode of transportation, including, foot, horse, vehicle or other mode, including, but not limited to:
1. removing vegetation;
 2. moving obstructions, including rocks, boulders, and outcroppings;
 3. filling low spots;
 4. maintenance over several years;
 5. creation of an identifiable route by use over time; and
 6. other similar activities.
- E. "Highway" means:
1. any road, street, trail, or other access or way that is open to the public to come and go at will, without regard to how or by whom the way was constructed or maintained; and

2. appurtenant land and structures including road drainage ditches, back and front slopes, cut and fill slopes, turnouts, rest areas, and other areas that facilitate use of the highway by the public. "Highway" includes pedestrian trails, horse paths, livestock trails, wagon roads, jeep trails, logging roads, homestead roads, mine-to-market roads, alleys, tunnels, bridges, and all other ways and their attendant access for maintenance.

F. "Maintenance" means any physical act of upkeep of a highway or repair of wear or damage whether from natural or other causes including but not limited to the following:

1. Vertical and horizontal alignment alterations to meet current safety standards;
2. Widening an existing road or flattening of shoulders or side slopes to meet current safety standards;
3. Grooming and grading of the previously constructed road surface;
4. Establishing and maintaining the crown with materials gathered along the road;
5. Filling ruts;
6. Spot filling with the same or improved materials;
7. Leveling or smoothing washboards;
8. Clearing the roadway of obstructing debris;
9. Cleaning culverts including head basins and outlets;
10. Resurfacing with the same or improved materials;
11. Installing, maintaining, repairing and replacing rip rap;
12. Maintaining drainage;
13. Maintaining and repairing washes and gullies;
14. Installing, maintaining, repairing and replacing culverts as necessary to protect the existing surface from erosion;
15. Repairing washouts;
16. Installing, maintaining, repairing and replacing marker posts;
17. Installing, maintaining and repairing water crossings;

18. Installing, maintaining, repairing and replacing cattle guards;
19. Installing, maintaining, repairing and replacing road signs;
20. Repair, stabilization and improvement of cut and fill slopes;
21. Application of seal coats;
22. Snow removal.

G. "Public lands not reserved for public use" means any federal lands not shown as reserved for public use on maps published by the Bureau of Land Management prior to October 21, 1976.

H. "R.S. 2477 right-of-way" or "right-of-way" means a right-of-way for a highway accepted on public lands not reserved for public use during the acceptance period.

I. "Servient" means the estate underlying the highway.

II. Acceptance:

A. The County hereby finds that the following are R.S. 2477 rights-of-way:

SEE EXHIBIT A

[Exhibit A should include all roads which meet the criteria set forth in the resolution, including: (1) All roads currently on the Class B system and any roads which were on the Class B system at any time prior to October 21, 1976; (2) All roads placed on the Class D system (3) Any route which exists today if there is evidence that a route existed in that location prior to October 21, 1976 (The presence of that route on a map based upon pre-1977 data should be sufficient); (4) Any route which exists today if it has been treated as a county road (e.g. maintained by the county) without objection from BLM after October 21, 1976.

Regarding whether the lands were unreserved, if the lands are managed by BLM today, it should be presumed that they were unreserved federal lands at the time the right-of-way was perfected. If the lands are under management as WSA's, the existence of the right-of-way before the creation of the WSA (in accordance with the principles of proof outlined above) indicates that the lands were unreserved at the time the right-of-way was perfected. Where the right-of-way traverses lands set aside in national parks, wildlife refuges and national forests, the right-of-way must be shown to have existed before the creation of the park, refuge or forest.]

B. The County shall not be deemed to consent or have consented to the exchange of any R.S. 2477 right-of-way unless a formal written resolution specifically so stating has been passed at a duly called public meeting of the County Commission. No employee or agent of the County has been given authority to abandon, waive or exchange any R.S. 2477 right-of-way and any prior action by any employee or agent purporting to take any such action was void when taken, unless

1. in the case of exchange, later ratified by formal written resolution as provided herein, or
2. in the case of abandonment or waiver, action has been taken in accordance with the procedures in Title 27, Chapter 12, Article 6, in which case the right-of-way reverts to the state.

C. The failure to include any right-of-way in paragraph II.A is not intended as evidence that said right-of-way was not accepted pursuant to R.S. 2477. The identification of R.S. 2477 rights-of-way in paragraph II.A may be amended from time to time as evidence establishing the acceptance of any R.S. 2477 right-of-way becomes available.

D. Where an R.S. 2477 right-of-way has been accepted through public use, the failure by the County to conduct mechanical maintenance of said right-of-way shall not affect in any way the status of said right-of-way as a highway accepted by the public pursuant to R.S. 2477.

E. The omission of any right-of-way from any plat, description, or map of county roads or highways, whether required by state law or otherwise, shall not be deemed a failure to accept the grant offered under R.S. 2477.

III. Abandonment:

A. Abandonment of any R.S. 2477 right-of-way shall take place only in accordance with the procedures in Title 27, Chapter 12, Article 6, Acquisition of Property for Highway Purposes.

B. If any R.S. 2477 right-of-way is abandoned by the County, the right-of-way shall revert to the state.

IV. Scope of right-of-way:

A. The scope of the R.S. 2477 right-of-way is that which is reasonable and necessary to ensure safe travel for all accepted uses.

B. The scope of the R.S. 2477 right-of-way includes the right to widen the highway as necessary to accommodate the increased travel associated with all accepted uses, up to, where applicable, improving a highway to two lanes so travelers can safely pass each other.

C. The safety standards established by the Utah Department of Transportation in accordance with Section 27-12-104 apply to all determinations of safety on R.S. 2477 rights-of-way used for vehicular travel. On all other routes, standards for maintenance and improvement shall be based upon considerations of safety and the activities which have constructed and maintained the route in the past.

V. The County and the owner of the servient estate shall exercise their rights without unreasonably interfering with one another. In furtherance of this:

A. The County shall design and conduct construction and maintenance activities so as to minimize impacts on servient lands, consistent with applicable safety standards.

B. The County shall perform maintenance pursuant to applicable state law in accordance with its discretion; no notice to the servient estate owner is required prior to performance of such maintenance.

C. Construction within the scope of the right-of-way which will result in significant new disturbance of servient land shall be performed only after notice to the servient land owner.

D. The County shall accept and take into account comments from servient land owners on any design feature or construction method which the landowner believes may result in unnecessary or undue degradation or derogation of the servient lands.

E. The County Sheriff is hereby authorized to take any action necessary to prevent unreasonable interference with the County's exercise of its rights by the owner of the servient estate.

VI. Public comment:

A. It is in the best interests of the County and the public that facts and legal issues relevant to the County's ownership or management of its rights-of-way accepted under R.S. 2477 or through public use be raised in a timely manner and it is a fundamental principle of due process and fairness that any person having knowledge relevant to such facts or issues bring them to the attention of the County.

B. Inclusion of any proposed action on the agenda for a duly called public meeting of the County Commission shall be deemed notice to the public for all purposes under this resolution.

C. Any factual or legal issue not brought to the attention of the County by presentation at the public meeting where action is proposed or authorized to be taken or by written comments filed within five days of said meeting shall be deemed waived by any party in later proceedings, whether in a court of law or otherwise.

D. The procedures of this section VI are applicable to any finding by the County that it has accepted an R.S. 2477 right-of-way, in this or any other resolution.

VII. This resolution shall be deemed an amendment to the [County planning document].

DATED THIS 14th DAY OF April, 1998.

By Chad J. Zeece
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Chairman
Board of County Commissioners

Attest:

Wicky McKee
*, Clerk

