

RESOLUTION 99-11

WHEREAS, the United States Congress 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, the United States Congress intended to promote the settlement of the western united States by granting rights-of-way for the construction of highways; and

WHEREAS, Daggett County, Utah, is the owner of highway rights-of-way accepted pursuant to the grant offered under R.S. 2477; and

WHEREAS, the County accepted the grant offered under R.S. 2477 through public use, County construction or maintenance of 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 the public has relied on and continues to rely on them since prior to October 21, 1976; and

WHEREAS, state, county and local health, search and rescue, resource management, fire protection and law enforcement 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

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Date 12/19/99 10:11 am
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RANAE WILDE, Recorder
Recorded By CL
For DAGGETT COUNTY
DAGGETT COUNTY

right to perform any and all 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, including, at a minimum, the existing disturbed area occupied by the rights-of-way and associated improvements, 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-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 any and all 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, including, at a minimum, the existing disturbed area occupied by the rights-of-way

and associated improvements; 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; and

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 October 21, 1976,

1. by the County of 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

2. use by the public for the period required by Section 27-12-89 or prior state law or
3. any other act consistent with state or federal law indicating acceptance of a right-of-way.

B. "Construction" means any physical act of readying a highway for use by the public according to the available or intended mode of transportation, including, foot, horse, vehicle or other mode. "Construction" includes:

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.

C. "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.

3. "Maintenance" means any physical act of upkeep of a highway or repair of wear or damage whether from natural or other causes.

D. "Public lands not reserved for public uses" means any federal lands open to entry or location.

E. "R.S. 2477 right-of-way" or "right-of-way" means a right-of-way for a highway constructed in this County on public lands not reserved for public uses and accepted by the County prior to October 21, 1976.

II. Acceptance:

A. The County hereby finds that the following rights-of-way were accepted as public highways across public lands prior to October 21, 1976:

B. As shown on BLM Surface Management Status Maps named Kings Peak (1983 edition), and Dutch John (1982 edition). Said rights-of-way are shown on said maps and designated within the Topographic Map Symbols legend as "Primary highway, hard surface" (heavy solid line), "Secondary highway, hard surface" (Medium weight solid line), "light duty road, principal street, hard or improved surface" (medium to light weight solid line), "Other road or street; trail" (light weight solid line and/or light weight dashed line), and "Airport; landing field; landing strip" (solid lines, may have additional cross line pattern).

As shown on United States Department of the Interior Geological Survey 7.5 minute series (Topographic) maps named Willow Creek Butte (1952 edition), Clay Basin (1952 edition), Goslin Mountain (1952 edition), Dutch John (1966 edition), Flaming Gorge (1966 edition), Manila (1963 edition), Jessen Butte (1963

edition), Phil Pico Mtn (1963 edition), Whiterocks Lake (1963 edition), Leidy Peak (1963 edition), Elk Park (1963 edition), East Park Reservoir (1963 edition), Mount Lena (1967 edition), Jackson Draw (1967 edition), Warren Draw (1952 edition), Swallow Canyon (1952 edition), Hoy Mountain (1967 edition), and Crouse Reservoir (1967 edition). Said rights-of-way are shown on said maps as "Heavy-duty" (double solid line with fill between lines), "Medium-duty" (double solid line with dashed fill between lines), "Light-duty" (double solid line with dashed fill between lines), "Light-duty" (double solid line), "Unimproved dirt" (double dashed line), and "Jeep Trail" or "Trail" (Single dashed line).

As shown on the Ashley National Forest Flaming Gorge & Vernal Ranger Districts Forest Visitor Map (1988 edition). Said right-of-way are shown on the said map and designated within the Legend as "Primary Highway" (double solid line with fill between lines), "Second Highway" (double solid line with dashed fill between lines), "Improved Road, Paved" (same as Secondary line type with larger gaps between fills), "Improved Road, Gravel" (same as Improved Road, Paved but with color difference of the fills), "Improved Road, Native Dirt Surface" (double solid line), "Unimproved Road-Includes 4WD not maintained for passenger cars" (double dashed line), "Trail" (single dashed line), "Recreation, Scenic, or Historical Trail" (Solid Dashed line with color difference from Trail linetype), "Scenic Byway" (double solid with heavy fill), and "Scenic Backway" (same linetype as Scenic Byway with a different color).

C. 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.

D. 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 perfection of any R.S. 2477 right-of-way becomes available.

E. Where an R.S. 2477 right-of-way has been perfected through public use, the failure by the County to conduct mechanical maintenance of said right-of way as a highway accepted by the public pursuant to R.S. 2477

F. 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 uses that occurred before October 21, 1976.

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 uses that occurred before October 21, 1976, up to, where applicable, improving a highway to two lanes so travelers can safely pass each other.

C. Unless otherwise established by formal action taken by the County Commission, the width of an R.S. 2477 right-of-way used for vehicular travel may not be less than the setback standards for wilderness boundaries along existing roads as described in Bureau of Land Management Manual H-8560-1, Management of Designated Wilderness Areas, dated July 27, 1988, as follows:

1. high standard paved highways shall be 300 feet from the centerline;
2. high standard logging roads shall be two feet from the centerline;
3. low standard logging, jeep, maintenance, dirt roads used for right-of-way, or similar roads shall be 30 feet from the centerline.

D. 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.

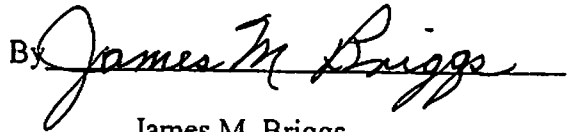
2477 rights-of-way used for vehicular travel.

- E. The County will design and conduct construction and maintenance activities so as to minimize impacts on the adjacent lands, consistent with applicable safety standards.
- 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 adjacent lands, consistent with applicable safety standards.
 - B. The County shall perform maintenance in 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 adjacent landowner, who may comment on any design feature or construction method which the landowner believes may result in unnecessary or undue degradation of the adjacent lands.
 - D. 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 management of its right-of-way accepted under R.S. 2477 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 actions 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 proceeding, whether in a court of law or otherwise.
- D. The procedures of this section VI are applicable to any finding by the County that is has accepted an R.S. 2477 right-of-way, in this or any other resolution.

DATED THIS 21st DAY OF DECEMBER 1999

By 

James M. Briggs
Chairman
Board of County Commissioners

Sharon P. Walters

Sharon P. Walters

Chad L. Reed

Chad L. Reed

Attest:

Vicky McKee

Vicky McKee, County Clerk

