

1 **R.S. 2477 HISTORIC ROADS CONCURRENT**

2 **RESOLUTION**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Michael E. Noel**

6 Senate Sponsor: Margaret Dayton

8 **LONG TITLE**

9 **General Description:**

10 This concurrent resolution of the Legislature and the Governor addresses the lack of
11 federal recognition of any R.S. 2477 highway rights across federally managed lands in
12 Utah and encourages federal recognition of these rights.

13 **Highlighted Provisions:**

14 This resolution:

- 15 ▶ strongly encourages the United States Government to immediately begin to
16 recognize valid state and local government rights-of-way across federally managed
17 lands and refrain from all actions to restrict and close historic and other valid
18 public highways in Utah;
- 19 ▶ encourages state and local government agencies to seek federal administrative
20 recognition of established R.S. 2477 rights across federally managed lands through
21 a Recordable Disclaimer of Interest process;
- 22 ▶ encourages counties to join with the state in adjudicating public highway
23 rights-of-way, without further delay, as necessary to preserve and protect the
24 public's right to enjoy the continued use of historic highways throughout the state;
- 25 ▶ recognizes the fiduciary duty of elected and appointed officials to protect highway
26 rights they manage in trust for the public; and
- 27 ▶ strongly encourages federal officials to refrain from pressuring state and local
28 officials to accept lesser Federal Land Policy Management Act Title V permits or
29 maintenance agreements on roads for which substantial evidence of a valid R.S.

30 2477 right-of-way exists, because the permits and agreements diminish or eradicate property
31 rights granted to Utahns by Congress under R.S. 2477.

32 **Special Clauses:**

33 None



35 *Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:*

36 WHEREAS, in 1866, the United States Congress passed legislation offering an
37 open-ended grant of "the right of way for the construction of highways over public lands, not
38 reserved for public uses";

39 WHEREAS, the grant of rights-of-way, commonly called "R.S. 2477," remained in
40 effect for 110 years, and most of the transportation routes of the West were established under
41 its authority;

42 WHEREAS, Congress protected all existing R.S. 2477 rights-of-way in the Federal
43 Land Policy Management Act (FLPMA) when it repealed R.S. 2477 on October 21, 1976;

44 WHEREAS, unlike any other federal land statute, the establishment of R.S. 2477
45 rights-of-way required no administrative formalities, entry, application, license, patent, or deed
46 on the federal side, and no formal act of public acceptance on the part of the states or localities
47 in whom the right was vested;

48 WHEREAS, Utah and its counties have historically provided safe, efficient, and
49 functional transportation systems throughout the state, including highways across federally
50 managed lands established because of the jurisdiction granted to the state and its counties
51 under R.S. 2477;

52 WHEREAS, R.S. 2477 has become one of the more contentious land use issues in the
53 West because of efforts by federal land managers and environmental advocacy groups to
54 weaken and diminish states' and counties' historical rights to operate highways providing
55 public travel across federally managed lands;

56 WHEREAS, the current federal policy to not recognize any R.S. 2477 rights-of-way in
57 the state of Utah conflicts with the Tenth Circuit Court of Appeal's recognition that most of

58 the transportation routes of the West were established under the authority of R.S. 2477 and
59 that a status quo of maintenance levels and types of use exists without federal permission;

60 WHEREAS, federal land managers have attempted to create a new federal
61 transportation system wherein Utah's congressionally granted rights would be administratively
62 abolished, creating federal highway jurisdiction which closes and restricts access to the state
63 and its counties who presently fund maintenance activities on federal transportation system
64 roads;

65 WHEREAS, federal land management agencies have duties and obligations to act in
66 accordance with the FLPMA and other lawful requirements yet are attempting to establish
67 federal control over state and local highways;

68 WHEREAS, the Department of the Interior has not formally recognized R.S. 2477
69 jurisdiction along Hole-in-the-Rock Road, which traverses Garfield, Kane, and San Juan
70 Counties, even as it is being celebrated as a symbol of pioneer settlement of the West,
71 exemplifying Congress's intent in granting highway rights-of-way;

72 WHEREAS, the Bureau of Land Management (BLM) refuses to recognize Tooele
73 County's R.S. 2477 jurisdiction over the Pony Express Route Road and the Hastings Pass
74 Road, associated with the Donner Party, in spite of the historical significance of the route and
75 the establishment of a highway right-of-way purposefully granted to Utah by Congress;

76 WHEREAS, federal land managers deny R.S. 2477 jurisdiction over historic highways
77 such as the Nine Mile Canyon Road in Carbon and Duchesne Counties, the Hidden Splendor
78 Mine Road in Emery County, the Burr Trail Road and the Notom Road in Garfield County,
79 the Beef Basis Road in San Juan County, and the Paria Canyon Road in Kane County, which
80 was recently closed by the BLM in response to public pressure from various environmental
81 advocacy groups, despite Kane County's repeated unanswered request for federal R.S. 2477
82 recognition of the road;

83 WHEREAS, federal land managers so far have failed to recognize state and county
84 jurisdiction to manage and regulate highways across federally managed lands, even though
85 state and local governments exclusively maintain and repair those highways with state and

86 local funds; and

87 WHEREAS, public highways established under R.S. 2477 are important to the
88 continuance of cohesive state and county transportation systems in providing safe, efficient,
89 and functional public access to and across lands of varied ownership and status consistent with
90 local tradition, culture, and economic needs:

91 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the
92 Governor concurring therein, strongly encourage the United States Government to cooperate in
93 recognizing all R.S. 2477 highway rights across federally managed lands, and refrain from any
94 and all actions that restrict and close historic public highways in Utah.

95 BE IT FURTHER RESOLVED that the Legislature and the Governor encourage state
96 and local government agencies to seek federal administrative recognition of established R.S.
97 2477 rights across federally managed lands through a Recordable Disclaimer of Interest
98 process.

99 BE IT FURTHER RESOLVED that the Legislature and the Governor, consistent with
100 federal policy, encourage counties in Utah to join with the state in adjudicating public
101 highway rights-of-way, without further delay, as necessary to preserve and protect the public's
102 right to enjoy the continued use of historic highways throughout the state.

103 BE IT FURTHER RESOLVED that the Legislature and the Governor recognize the
104 fiduciary duty of elected and appointed officials to protect highway rights they manage in trust
105 for the public.

106 BE IT FURTHER RESOLVED that the Legislature and the Governor encourage
107 federal officials to refrain from pressuring state and local officials to accept lesser FLPMA
108 Title V permits or maintenance agreements on roads for which substantial evidence of a valid
109 R.S. 2477 right-of-way exists, because the permits and agreements diminish and eradicate
110 property rights granted to Utahns by Congress under R.S. 2477.

111 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the United
112 States Secretary of the Interior, the Bureau of Land Management, the Garfield County
113 Commission, the Kane County Commission, the San Juan County Commission, the Carbon

114 County Commission, the Duchesne County Commission, the Emery County Commission, the
115 Utah Association of Counties, the Utah League of Cities and Towns, and the Utah Department
116 of Natural Resources.