

BEFORE THE BOARD OF SUPERVISORS, COUNTY OF INYO

RESOLUTION No. 2002- 36

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF INYO,
STATE OF CALIFORNIA, REAFFIRMING AND ESTABLISHING STANDARDS FOR
THE RECOGNITION OF RIGHTS-OF-WAY IN ACCORDANCE WITH
UNITED STATES REVISED STATUTE 2477**

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, re-enacted and recodified as Revised Statutes 2477 (R.S. 2477) 43. U.S.C. Section 932; and

WHEREAS, The County of Inyo, when established in 1866, included considerable areas for ranching, farming, and mining, with intensive prospecting and exploration for valuable minerals, forest and agricultural products; and

WHEREAS, much of the mountains, desert and valley area of the County became laced with networks of wagon roads, trails, horse and foot paths, as well as water pipelines, which were constructed, maintained and used to facilitate such activities; and

WHEREAS, many of these roads, trails, paths and pipelines have been in general use by the general public since that time for recreational, domestic, agricultural, mining, grazing and packing use; and

WHEREAS, public access to and upon these rights-of-way is essential to the economic, social and political well being of the communities within Inyo County.

NOW, THEREFORE, BE IT RESOLVED that the County of Inyo and the public may have acquired rights-of-way pursuant to R.S. 2477 in those certain ways provided by California and Federal Law, including, but not limited to, the following:

- 1) Use by the County or public with the intention of creating a public highway over public lands; or
- 2) Construction or maintenance of a highway; or
- 3) Inclusion of the right-of-way in a State, County or Municipal road system, plat, description, or map of County roads; or
- 4) Expenditure of any public funds on the highway; or
- 5) Execution of a Memorandum of Understanding or other agreement with any other public or private entity or agency of the Federal Government which recognizes the right or obligation of the County to construct or maintain a highway or a portion of a highway; or

- 6) Any other act by the County or the public consistent with State or Federal Law indicating acceptance of the right-of-way; or
- 7) Use by the public for a period required by the California Civil Code.

BE IT FURTHER RESOLVED that, although the County has the right to maintain any valid R.S. 2477 rights-of-way, the absence of County maintenance of such a right-of-way, either in the past or in the future, shall not affect in any way the status of that right-of-way, nor shall the assertion of an R.S. 2477 right-of-way obligate the County to maintain that right-of-way.

BE IT FURTHER RESOLVED, that the County hereby finds that any rights-of-way located in the County, which fall in the purview of the conditions above set forth, may be R.S. 2477 rights-of-way. Further, the County shall not be deemed to consent or have consented to the exchange or abandonment of any R.S. 2477 rights-of-way unless a formal written resolution specifically so stating has been passed at a duly called public meeting of the County Board of Supervisors.

BE IT FURTHER RESOLVED that, without waiving the foregoing or its right to use or assert different standards, interpretations, or criteria for the assertion of R.S. 2477 claims, the County may pursue R.S. 2477 rights-of-way with respect to a particular road only when it finds, upon substantial and reliable proof considered by it, that:

- 1.) the road under consideration constitutes a highway, construction of which occurred upon public lands not reserved for public uses and was completed before the earlier of:
 - a.) the date when those public lands were reserved for public uses; or
 - b.) October 21, 1976, the effective date of the Federal Land and Policy Management Act, which repealed R.S. 2477; and
- 2.) the road, or the use thereof, is threatened with closure, elimination, or significant restriction by the United States, or any other person or entity, public or private; and
3. there is a compelling reason to preserve the road, or the use thereof.

In determining whether a road meets these criteria, the County shall, except as provided for below, construe and apply the terms “construction,” “highway,” and “public lands not reserved for public uses” in accordance with the definitions or interpretations given them in the regulations or policies of or used by the federal agency that administers the land upon which the road is located.

Notwithstanding the foregoing, in the event that any such regulations, policies, definitions, or interpretations or portions thereof, are declared invalid by the United States Court of Appeals or the United States Supreme Court, the County shall give the above-mentioned terms such meanings as the County finds are reasonable and lawful, pending the federal agency’s promulgation of regulations or adoption of policies or interpretations conforming to the Court’s decision; in the case of a conflict between a ruling of the United States Court of Appeals for the

Ninth Circuit and any other Circuit of the Court of Appeals concerning the regulations, policies, definitions or interpretations described above, the County shall observe the ruling of the Ninth Circuit.

BE IT FURTHER RESOLVED that, in order for Inyo County to determine when and whether to assert its rights under R.S. 2477 pursuant to the policy set forth in this Resolution, and to ensure public participation with respect to the closure of roads on federal land within the County, this Board of Supervisors hereby requests all federal agencies to notify the Inyo County Planning Department, through the collaborative planning process or otherwise, of any action the agency intends or plans to take, or contemplates taking, to close or significantly restrict the use of any road in Inyo County.

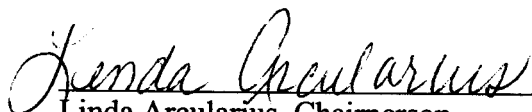
PASSED AND ADOPTED THIS 14 DAY OF MAY, 2002, BY THE FOLLOWING VOTE:

AYES: Supervisors Arcularius, Lent, Hambleton and Dorame

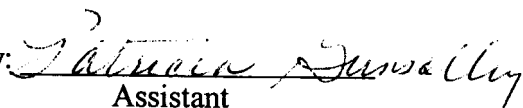
NOES: -0-

ABSTAIN: -0-

ABSENT: Supervisor Bear


Linda Arcularius, Chairperson
Inyo County Board of Supervisors

ATTEST:
RENÉ MENDEZ
CLERK OF THE BOARD

By: 
Assistant