



RESOLUTION NUMBER: 2016-23

Support for Historic Rights-of-Ways Legislation H.R. 4313

WHEREAS, The United States Congress granted a right-of-way for the construction of highways over public lands not otherwise reserved in section 8 of the federal "Mining Law of 1866", reenacted and re-codified as Revised Statutes 2477, 43 U.S.C. sec. 932; and

WHEREAS, R.S. 2477 was repealed by the Federal Land Policy and Management Act of 1976 (FLPMA). Rights created under RS-2477 were grandfathered; and

WHEREAS, in the intervening 39 years the federal agencies have tried to impose a variety of resolutions on counties for confirming such rights-of-way, including only considering roads which have been substantially improved, e.g. with paving; and

WHEREAS, the 2005 decision of the 10th Circuit Court of Appeals confirmed the rights-of-ways do exist, but set forth a confirmation process requiring the claimant to file a quiet title action in Federal District Court; and

WHEREAS, when "reserves" were created by Congressional or Administration action, e.g. land withdrawals, creation of National Park units, etc. a 12-year statute of limitations required immediate filing or the existence of the right-of-way could be held to be void, even as counties continued to maintain such routes, and the public utilized them; and

WHEREAS, none of the routes that exist under R.S. 2477 are recognized to exist on the official land records of the United States: the Master Title Plats (MTPs) maintained by the Bureau of Land Management (BLM); and

WHEREAS, the alternative means of recognizing such claims (suggested at various times by the BLM) is for counties to initiate an application under Title V of FLPMA; and

WHEREAS, using this however, can open the very existence of the route to question, and subjects such claim for an existing road which already has a right-of-way granted under R.S. 2477, to review under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and the Section 106 of the Antiquities Act, among others, adding to costs as well as creating the need for expensive mitigation measures; and

WHEREAS, H.R. 4313, 114th Congress, has been introduced to provide an efficient and cost-effective method for the federal government to confirm such claims.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ROOSEVELT COUNTY, NEW MEXICO supports passage of H.R. 4313, and introduction, consideration and passage in the Senate of this bill or a companion creating an administrative process for confirming historic rights-of-ways on federal lands for qualifying roads, including the waiver of the statute of limitations regarding timely filing of such applications where qualifying roads cross "reserved" land.

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DeAun D Searl, Roosevelt Co. Clk., Roosevelt, NM



PASSED, ADOPTED AND APPROVED this 15th day of March, 2016.



DeAun D Searl
DeAun D. Searl, Roosevelt County Clerk

By: *Stephanie Hicks*
Chief Deputy Clerk

**BODY OF COUNTY COMMISSIONERS
ROOSEVELT COUNTY, NEW MEXICO**

Richard Leal
Richard Leal, Chairman – District II

Lewis (Shane) Lee
Lewis (Shane) Lee, Vice-Chair – District III

Jake Lopez
Jake Lopez – District I

Gene Creighton
Gene Creighton – District IV

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Paul Grider – District V



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