

**MOFFAT COUNTY, COLORADO RESOLUTION NO. 2003-05**

**A RESOLUTION RECOGNIZING RIGHTS-OF-WAY ESTABLISHED OVER PUBLIC LANDS UNDER R.S. 2477**

**WHEREAS**, the United States Congress, for the purpose of promoting the settlement of the western United States by establishment of highways, granted a 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in Section 8 of the Mining Act of 1866, reenacted and recodified as Revised Statutes 2477 (R.S. 2477), 43 U.S.C. §932 (repealed Oct. 21, 1976); and

**WHEREAS**, the above-mentioned right to pass across public lands, except those withdrawn from public use effected a grant, which was accepted whenever and wherever roads and ways were established over unreserved federal land by construction or otherwise and were available for public use, and these public highways remain available to this day for public use; and

**WHEREAS**, these rights-of-way identified in this resolution were established before the repeal of R.S. 2477 by the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§1701-1784, on October 21, 1976, and are thus preserved in the same Act; and

**WHEREAS**, public access to routes of travel are essential to the County's transportation and public access systems and to the economic, social, and political well-being and custom and culture of the communities and citizens of the County; and

**WHEREAS**, identifying, asserting, and protecting these rights-of-way is necessary to protect the County's resources and to promote public health and safety, including but not limited to, search and rescue, fire protection, health and law enforcement, and other emergency services; and

**WHEREAS**, many land uses in the County depend upon roads and rights-of-way associated with general non-motorized and motorized ingress, passage, and egress; the County also depends upon the responsible use and development of public land resources and adequate, feasible, and fully-protected access is required to utilize and to protect these resources; and

**WHEREAS**, the term "highway" in this resolution includes, but is not limited to, pedestrian trails, horse paths, livestock trails, wagon roads, jeep trails, logging roads, homestead roads, mine-to-market roads, alleys, tunnels, bridges, dirt or gravel roads, paved roads, and all other ways and their attendant access for maintenance, reconstruction, and construction; and

**WHEREAS**, the County's right, title, and interest in these rights-of-way includes the right to evaluate and perform construction, reconstruction, and maintenance which is reasonable and necessary for safe passage for the rights-of-way established prior to the repeal of R.S. 2477 or the reservation of the lands for public use; the County will perform maintenance, reconstruction, or construction consistent with the County land use plan, public desires and necessity; 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 and vacated in accordance with applicable law; and

**WHEREAS**, the County adopted Resolution number 2000-34 recognizing rights-of-way established over public lands under R.S. 2477, which directed Moffat County staff to undertake a detailed inventory of highway rights-of-way; and

**WHEREAS**, the County Commissioners adopted the Moffat County Land Use Plan in September 2001, which addresses access issues and further finds that access across federal lands and to state lands is essential to achieve the goals and objectives of the land use plan, particularly maintaining and enhancing the custom and culture of the County; and

**WHEREAS**, the County adopted an R.S. 2477 Inventory Protocol entitled “Perfecting R.S. 2477 Assertions in Moffat County, Colorado” in June, 2002 and followed this protocol to inventory and classify established R.S. 2477 Rights-of-way in the County; and

**WHEREAS**, the County has formally and informally communicated the R.S. 2477 assertion process to federal land agencies, including, the National Park Service (NPS), the U.S. Fish and Wildlife Service (USFWS), the Bureau of Land Management (BLM), and the U.S. Forest Service, and to state land agencies in formal and public discussions regarding this right-of-way assertion process and timelines at County Commission meetings, and at Land Use Board Meetings since January 2002; and

**WHEREAS**, the County took the following specific steps to notify the federal and state land agencies, including: on December 9, 2002 the Moffat County Natural Resources Department contacted and/or confirmed contact with each affected federal and state agency to assure their knowledge of the final timeframe and right-of-way assertion process; and on December 16, 2002, the County made maps of proposed R.S. 2477 assertions available for review; and

**WHEREAS**, In addition to public discussions of the R.S. 2477 right-of-way assertion process in Land Use Board and County Commissioner meetings, and the December 9, 2002 notification of timelines to affected federal and state agencies, the Moffat County Land Use Board held public meetings regarding the R.S. 2477 rights-of-way identified in the attached map on December 16, 2002, in Craig and Maybell, Colorado, on December 21, 2002 in Browns Park, Colorado, and December 30, 2002 in Dinosaur Colorado; and Moffat County held an intergovernmental meeting on December 30, 2002 with representatives from all affected federal and state agencies participating; and

**WHEREAS**, the County has considered and evaluated the comments received and has made changes, when determined to be appropriate; and

**WHEREAS**, the County finds that sufficient time has been provided before the adoption of the R.S. 2477 assertions and maintenance protocol and that the public hearings and meetings exceed the minimum requirements under Colorado law and further finds that because adoption of this resolution does not foreclose modification at some future date nor does it foreclose continued

discussions and cooperation with the federal agencies, there is no sound reason to delay the proposed action by the County; and

**WHEREAS**, the Moffat County Commissioners have received requests for public access from private landowners and the Colorado State Land Board requesting public access across certain parcels of the respective owners properties in order to provide connectivity to rights-of-way on federally managed lands and those rights-of-way are depicted on the map as pending; and

**WHEREAS**, the R.S. 2477 Maintenance Protocol which is a part of this resolution provides guidance for the maintenance of R.S. 2477 Rights-of-Way identified in this resolution; and

**WHEREAS**, the Moffat County Land Use Board, after hearing the public comment at the public meetings and receiving written and oral comments from the public, as well as federal and state agencies, on January 3, 2003, accepted a motion recommending the Moffat County Commissioners adopt the enclosed map and Maintenance Protocol, as modified, to assert the R.S. 2477 rights-of-way and maintenance standard for rights-of-way located within Moffat County on land managed by the United States.

**NOW, THEREFORE BE IT RESOLVED**, that the Moffat County Commissioners exercise their right to assert Moffat County highway rights-of-way on federal lands within Moffat County, as identified in the attached map, which is incorporated by reference and made a part hereof.

**NOW, THEREFORE BE IT ALSO RESOLVED**, that Moffat County hereby adopts the attached Maintenance Protocol for R.S. 2477 Rights-of-Way.

**NOW, THEREFORE BE IT ALSO RESOLVED**, that Moffat County finds that the assertion of these R.S. 2477 rights-of-way is of the highest priority; however, Moffat County reserves the right to assert highway rights-of-way in addition to this existing assertion, should the County Commission deem it to be appropriate.

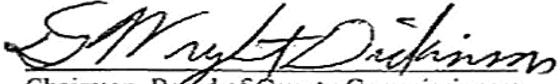
**NOW, THEREFORE BE IT ALSO RESOLVED**, that Moffat County will work with the State Land Board to confirm and secure public access across state lands where appropriate.

**NOW, THEREFORE BE IT ALSO RESOLVED**, that Moffat County will work with private landowners to provide public access while respecting private property interests where appropriate.

**NOW, THEREFORE BE IT ALSO RESOLVED**, that the County will continue to collaborate with the state and federal land agencies as per the Maintenance Protocol for RS 2477 Rights-of-way referenced herein.

**NOW, THEREFORE BE IT ALSO RESOLVED**, that nothing in this resolution shall limit the authority of the Moffat County Commissioners to modify, vacate, abandon, or the expand the R.S. 2477 assertions.

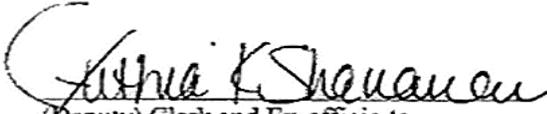
Adopted this 10<sup>TH</sup> day of January, 2003.

  
Chairman, Board of County Commissioners

STATE OF COLORADO )  
  )ss  
COUNTY OF MOFFAT )

I, Beverly Johnson, County Clerk and Ex-officio to the Board of County Commissioners, County of Moffat, State of Colorado, do hereby certify that the above and foregoing is a true and complete copy of the resolution as adopted on the date stated.

WITNESS, my hand and seal this 10 day of January, 2003.

  
(Deputy) Clerk and Ex-officio to  
County Commissioners, Moffat County  
State of Colorado; Beverly Johnson

