

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
CO. SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

Transportation-Gen'l

September 18, 2001

FROM: KEN A. MILLER, Director
Department of Public Works - Transportation

SUBJECT: RESOLUTION ASSERTING ROAD RIGHTS-OF-WAY IN ACCORDANCE WITH
REVISED STATUTE 2477

RECOMMENDATION: (1) Adopt resolution asserting road rights-of-way in the County in accordance with Revised Statute (R.S.) 2477 and (2) Reaffirm Board Resolution No. 98-149 asserting road rights-of-way in the Mojave Preserve and nearby County areas.

BACKGROUND INFORMATION: On July 28, 1998 the Board adopted Resolution No. 98-149 identifying and asserting road rights-of-way in the Mojave Preserve and other nearby County areas in accordance with R.S. 2477. This statute was passed by Congress in 1886 and granted right-of-ways for roads/highways over public land that had not been reserved for public uses. In this County, mostly in desert areas, numerous road rights-of-ways were acquired between 1886 and 1976, when the statute was repealed. These routes have been essential for transportation and public access. Search and rescue, fire protection, resource management, health and law enforcement personnel have relied upon these accesses to carry out their respective important public functions. Public access along these routes of travel have been important to economic and social well being of the County. Following extensive field reviews to identify roads within and adjacent to the Mojave Preserve and adjacent areas, the Department submitted its findings in August 12, 1997 letters to both the National Park Service and the Bureau of Land Management. The Board's resolution of July 28, 1998 was also transmitted to these agencies. Each of these federal agencies has noted receipt of the information and resolution, but have not taken any action to concur in or validate the R.S. 2477 rights-of-way that exist. As the Bureau of Land Management has moved forward in the development of additional management plans in our desert area, they have continued to propose closures for routes that have valid R.S. 2477 rights. This resolution is intended to assert and reaffirm to the Bureau of Land Management, the U.S. Forest Service, the National Park Service and others, the County's position that R.S. 2477 rights-of-way exist for many traveled routes in the County and should, accordingly, be kept open for travel for the same necessary purposes and uses that have taken place for many years.

REVIEW BY OTHERS: This item was reviewed by Deputy County Counsel Charles S. Scolastico on September 7, 2001 and by the County Administrative Office (Tom Forster, Administrative Analyst) on September 12, 2001.

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cc: w/Resolution
PW-Miller
Co. Counsel-Scolastico
CAO-Forster
File

nh

Record of Action of the Board of Supervisors
RESOLUTION NO. 2001-241

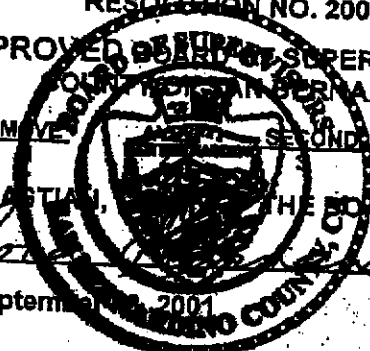
**APPROVED BY THE BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO**

MOTION	<u> </u> <u> </u> <u> </u> <u> </u>	<u> </u> <u> </u> <u> </u> <u> </u>	<u> </u> <u> </u> <u> </u> <u> </u>	<u> </u> <u> </u> <u> </u> <u> </u>
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J. RENEE BASTIAN, CLERK OF THE BOARD

BY *[Signature]*

DATED: September 18, 2001



ITEM 091

RESOLUTION REAFFIRMING ROAD RIGHTS-OF-WAY IN ACCORDANCE WITH REVISED
STATUTE 2477

September 18, 2001

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FINANCIAL IMPACT: There will be no cost incurred other than minor cost to transmit the resolution to the Bureau of Land Management, the U.S. Forest Service, and the National Park Service.

SUPERVISORIAL DISTRICT(S): 1st, 3rd

PRESENTER: Ken A. Miller, 387-7906

RESOLUTION NO. 2001-241

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO, REAFFIRMING ROAD RIGHTS-OF-WAY IN ACCORDANCE WITH REVISED STATUTE 2477

On this 18th day of September, 2001, on motion of Supervisor Postmus, duly seconded by Supervisor Hansberger, and carried, the following resolution is adopted by the Board of Supervisors of the County of San Bernardino, State of California, acting in its official capacity as the legislative body of the County of San Bernardino:

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, San Bernardino County, when established in 1853, 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 areas of the County became laced with networks of wagon roads, trails, horse and footpaths to facilitate such activities; and,

WHEREAS, many of these roads, trails and paths have been in general use by the public since that time, and many have been further developed into mining roads, logging roads, and access roads, for the removal of minerals, forest products, agricultural products; and,

WHEREAS, other of these roads, trails and paths have continued in use by the general public for hunting, fishing, hiking, horseback riding and other recreational uses; and,

WHEREAS, there now exists in San Bernardino County, an extensive network of roads, mining roads, logging roads, trails, horse trails, hiking trails and footpaths, all of which provide access to and throughout National Forest, Bureau of Land Management and Mojave National Preserve lands representing a substantial portion of the land within San Bernardino County; and,

WHEREAS, these rights-of-way are essential to the County's Transportation and Public Access Systems and the public has relied on and continues to rely on them since prior to October 21, 1976; and,

WHEREAS, Search and Rescue, Resource Management, Fire Protection, Health and Law Enforcement Personnel rely on these access roads to carry out important functions; and,

WHEREAS, public access to routes of travel are essential to the economic, social and political well being of the communities within the County; and,

WHEREAS, these rights-of-way are important to the free flow of commerce in the United States; and,

WHEREAS, other property owners may have succeeded the United States as owners of servient estates traversed by rights-of-way acquired by the County and the public pursuant to the grant 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.W. 2477; and,

WHEREAS, the elderly, physically handicapped and disabled require routes of travel accessible by motor vehicle to gain access to the public lands, resources and private property within the County; and,

WHEREAS, these rights-of-way also serve to provide access to a variety of improvements made upon the public by the public, Federal permittees and citizens, including wells, springs, corrals and watering facilities for wildlife, and such maintenance has been historically performed, and such maintenance cannot be performed in absence of the use of these vehicle routes; and,

WHEREAS, the County's right, title and interest in these rights-of-way include the right, but not the obligation, to perform construction and maintenance which is reasonable and necessary for safe passage for the uses established prior to the repeal of R.S. 2477 and as those uses may increase over time based upon currently applicable safety standards; and,

WHEREAS, the rights-of-way acquired pursuant to 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 acquired pursuant to R.S. 2477 be retained in perpetuity for the use and benefit of the public unless abandoned in accordance with applicable law.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The County and the public 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:
 - a. Use by County or public with the intention of creating a public highway over public lands; or
 - b. Construction or maintenance of a highway; or

- c. Inclusion of the right-of-way in a State, County or Municipal road system, plat, description, or map of county roads; or
 - d. Expenditure of any public funds on the highway; or
 - e. Execution of a Memorandum of Understanding or other agreement with any other or private entity or agency of the Federal Government that recognizes the right or obligation of the County to construct or maintain a highway or a portion of a highway; or
 - f. Any other act by the County or the public consistent with State or Federal Law indicating acceptance of a right-of-way; or
 - g. Used by the public for a period required by the California Civil Code.
2. The County hereby finds that any roads located in the County, which fall in the purview of the conditions above set forth, are R.S. 2477 rights-of-way.
 3. 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. No employees or agents of the County have 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 such action was void when taken, unless in the case of exchange, later ratified by formal action of the Board of Supervisors.
 4. Where an R.S. right-of-way has been acquired through public use, the failure by the County to conduct mechanical maintenance of said right-of-way shall not affect in any way the status of said right-of-way as a highway acquired by the public pursuant to R.S. 2477.
 5. 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 to waive or a failure to acquire the grant offered under R.S. 2477.
 6. Scope of Right-of-Way:
 - a. Scope of the R.S. 2477 Right-of-Way is that which is reasonable;
 - b. The scope of R.S. 2477 Right-of-Way includes the right to widen the highway as necessary to accommodate the increased travel associated with all accepted uses, up to where applicable, improving a highway so travelers can safely pass each other, and to modify or change horizontal alignment, and/or vertical profiles where the roads require for public safety and to meet current design standards.

7. This resolution is not intended to include any street or highway into the County maintained road system, excepting those roads previously included in such system, and the County thereby does not accept any obligation or responsibility for maintenance of any of said roads if such road was not already in the County maintained road system.
8. The inclusion of roads in the County maintained road system shall be in accordance with Streets and Highways Code Section 941 et seq.

PASSED AND ADOPTED by the Board of Supervisors of San Bernardino County, State of California, by the following vote:

AYES:	Supervisors:	Postmus, Mikels, Hansberger, Aguiar
NOES:	Supervisors:	None
ABSENT:	Supervisors:	Eaves

STATE OF CALIFORNIA)
) ss
 COUNTY OF SAN BERNARDINO)

I, J. RENEE BASTIAN, Clerk of the Board of Supervisors of the County of San Bernardino, State of California, hereby certify the foregoing to be a full, true, and correct copy of the record of action taken by said Board of Supervisors, by vote of the members present, as the same appears in the Official Minutes of said Board at its meeting of September 18, 2001.

J. RENEE BASTIAN
 Clerk of

By:

