

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

Senate Engrossed
FILED
MICHELE REAGAN
SECRETARY OF STATE

SENATE CONCURRENT MEMORIAL 1002

A CONCURRENT MEMORIAL

URGING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION THAT CONFIRMS
THAT STATE LAW DETERMINES THE ENTIRE SCOPE OF R.S. 2477 RIGHT-OF-WAY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 To the Congress of the United States of America:

2 Your memorialist respectfully represents:

3 Whereas, in order to promote settlement of the American West in the
4 1800s and provide access to mining deposits located under federal lands, the
5 United States Congress granted rights-of-way across public lands for the
6 construction of highways by a provision of the Mining Law of 1866, now known
7 as Revised Statute (R.S.) 2477; and

8 Whereas, the United States Congress repealed R.S. 2477 in 1976 as part
9 of its enactment of the Federal Land Policy and Management Act, along with
10 the repeal of other federal statutory rights-of-way, but it expressly
11 preserved R.S. 2477 rights-of-way that already had been established; and

12 Whereas, in its entirety, R.S. 2477 provided that "the right of way for
13 the construction of highways over public lands, not reserved for public uses,
14 is hereby granted"; and

15 Whereas, R.S. 2477 was self-executing and did not require government
16 approval or public recording of title, which resulted in uncertainty
17 regarding whether particular rights-of-way had in fact been established; and

18 Whereas, in April 2014, the Tenth Circuit Court of Appeals issued a
19 decision in *San Juan County v. United States* in which the court rejected the
20 notion that state law should determine the entire scope of R.S. 2477
21 rights-of-way, holding that state law has provided "convenient and
22 appropriate principles" for determining the scope and validity of an
23 R.S. 2477 right-of-way, but it can be dismissed when it "contravenes
24 congressional intent"; and

25 Whereas, in October 2014, the Ninth Circuit Court of Appeals issued a
26 decision in *County of Shoshone v. United States* in which it confirmed that
27 state law controls, or is "borrowed," in determining what constitutes
28 sufficient public use, reflecting a rejection of the approach taken by the
29 Tenth Circuit Court of Appeals in *San Juan County v. United States*; and

30 Whereas, outdoor recreation is an essential industry in Arizona,
31 generating \$10.6 billion in consumer spending, 104,000 direct Arizona jobs,
32 \$3.3 billion in wages and salaries and \$787 million in state and local tax
33 revenue; and

34 Whereas, the reduction of public roads in this state would diminish
35 access to and enjoyment of outdoor recreation opportunities on public lands,
36 detrimentally impacting Arizona's economy.

37 Wherefore your memorialist, the Senate of the State of Arizona, the House of
38 Representatives concurring, prays:

39 1. That the Members of the United States Congress enact legislation
40 that is consistent with the decision of the Ninth Circuit Court of Appeals in
41 *County of Shoshone v. United States* and that confirms that state law
42 determines the entire scope of R.S. 2477 rights-of-way.

43 2. That the Secretary of State of the State of Arizona transmit copies
44 of this Memorial to the President of the United States, the President of the
45 United States Senate, the Speaker of the United States House of
46 Representatives and each Member of Congress from the State of Arizona.

Passed the House March 25, 2015,

by the following vote: 37 Ayes,

22 Nays, 1 Not Voting

[Signature]

Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate March 5, 2015,

by the following vote: 20 Ayes,

10 Nays, 0 Not Voting

[Signature]

President of the Senate

[Signature]
Secretary of the Senate
[Signature]

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 30th day of March, 2015,

at 2:11 o'clock P M.

[Signature]

Secretary of State

S.C.M. 1002