

PROPOSED AMENDMENT

SENATE AMENDMENTS TO S.C.M. 1002

(Reference to printed memorial)

1 Strike everything after the enacting clause and insert:

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

7 Whereas, the United States Congress repealed R.S. 2477 in 1976 as part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

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

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

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

24 Whereas, in October 2014, the Ninth Circuit Court of Appeals issued a
25 decision in *County of Shoshone v. United States* in which it confirmed that
26 state law controls, or is "borrowed," in determining what constitutes

1 sufficient public use, reflecting a rejection of the approach taken by the
2 Tenth Circuit Court of Appeals in *San Juan County v. United States*; and

3 Whereas, outdoor recreation is an essential industry in Arizona,
4 generating \$10.6 billion in consumer spending, 104,000 direct Arizona jobs,
5 \$3.3 billion in wages and salaries and \$787 million in state and local tax
6 revenue; and

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

10 Wherefore your memorialist, the Senate of the State of Arizona, the House of
11 Representatives concurring, prays:

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

16 2. That the Secretary of State of the State of Arizona transmit copies
17 of this Memorial to the President of the United States, the President of the
18 United States Senate, the Speaker of the United States House of
19 Representatives and each Member of Congress from the State of Arizona."

20 Amend title to conform

21

GAIL GRIFFIN

2/10/15
3:09 PM
S: SC/jo