

**COUNTY OF GRANT**

**RESOLUTION NO. 99-10-28A**

**A DECLARATION AND ACCEPTANCE OF ALL PUBLIC  
RIGHTS-OF-WAY AS AN IMPLIED TRUST BY THE BOARD OF  
COUNTY COMMISSIONERS WITHIN THE JURISDICTION OF  
GRANT COUNTY, NEW MEXICO FOR THE INHABITANTS OF  
GRANT COUNTY AND THE PUBLIC, AS  
BENEFICIARIES OF THE TRUST**

**WHEREAS**, in §4-37-1, NMSA 1978, counties are granted "those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county of its inhabitants," and "the board of county commissioners may make and publish any ordinance to discharge these powers not inconsistent with statutory or constitutional limitations placed on counties;" and

**WHEREAS**, in reference to the standard in *Butler County Mo. v. Campbell*, 182 SW 2d 589, according to Attorney General Opinion No. 67-147, "county officials are the 'trustees' for the people within the county;" and

**WHEREAS**, in §4-38-18 NMSA 1978, boards of county commissioners are authorized : "to represent the county and have the care of the county property and the management of the interest of the county in all cases where no other provision is made by law;" and

**WHEREAS**, in accordance with the New Mexico Supreme Court ruling in *Lovelace v. Hightower*, 50 NM 50, public rights-of-way may be constructed in New Mexico through use alone, and the acceptance of rights-of-ways in New Mexico, granted for the construction of highways under 43 USCA 932, may be established by: "the continued use of the road by the general public for such time and under such circumstances as to clearly prove an acceptance of the offer by it . . . whether the time of user is six months or fifty years;" and

**WHEREAS**, the public rights-of-way within Grant County have been established through centuries of use, in the construction of wagon roads and other thoroughfares, through warrants issued to individual residents to construct or maintain the roads, through condemnation and other purchase, and through the dedications and grants of both public and private landowners, including the federal governments of Spain, Mexico and the United States and settlers and families who resided, and/or purchased lands in what is now County of Grant, New Mexico and the State of New Mexico; and

**WHEREAS**, it is the intent of the Grant County Board of County Commissioners, having reviewed the historical uses of the County's public rights-of-way, and recognizing the present value of these rights-of-way to the public safety, prosperity, comfort and convenience of the people of the State of New Mexico, to preserve and improve these rights-of-way, as authorized by federal, State and local law;

**NOW THEREFORE, BE IT RESOLVED, THAT THE BOARD OF COUNTY COMMISSIONERS OF GRANT COUNTY HEREBY:**

- 1) Recognize and accept the public rights-of-ways as lands that have been held in trust by the Board of County Commissioners including, but not limited to, all public rights-of-way granted, conveyed or otherwise transferred to the County, the State of New Mexico and/or the Territory of New Mexico by individuals, organizations, corporations, townships, the State of New Mexico, the United States government, the governments of Mexico and/or Spain under local, state, federal, foreign or international law.
- 2) Declares acceptance by the Board of County Commissioners of Grant County of all such public rights-of-way, whether such rights-of-way are "public highways", "public roads", "roads", "land", "real estate", "public property", "easement", "grants", "deeds", "plats", "streets", "ways", "trails", "paths", "bridle paths" or other form of "property" or "thoroughfare" as land held in trust for the residents of Grant County and the citizens of the State of New Mexico.
- 3) Determines that all said public rights-of-way shall continue to be held in trust by the Grant County Board of County Commissioners as trustees for the inhabitants of Grant County and for the people of the State of New Mexico who shall be considered beneficiaries of said public trust.
- 4) All such property held in trust shall be managed by the Grant County Board of County Commissioners in the best interests of the residents of Grant County and the citizens of the State of New Mexico and furthermore shall be kept open, when deemed appropriate by the Board of County Commissioners, so as to render such public rights-of-way accessible or available, subject to investigation and review, when deemed appropriate at the Board of County Commissioners for any purpose so authorized and regulated in the public interest; such management shall allow the Board of County Commissioners to take appropriate actions including but not limited to the removal of impediments, encroachments, restrictions, or other obstructions to said purposes, and for any improvements in said lands, subject to the operation of law.

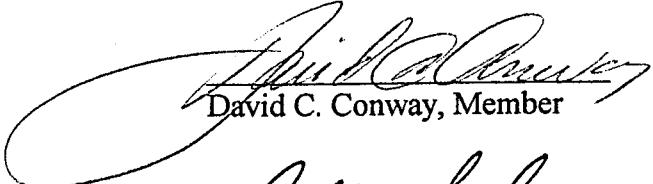
5) Order said public rights-of-way be managed pursuant to the New Mexico Constitution, Article IX, Section 14 and other laws so as to prevent the direct or indirect aid or benefit to any person, association, corporation or other entity without due compensation for the use thereof in order to maintain the status of such public rights-of-way as land held in trust for the residents of Grant county and the citizens of the State of New Mexico.

**PASSED, APPROVED AND ADOPTED** by the Board of County Commissioners of Grant County this 14<sup>th</sup> day of October, 1999.

BOARD OF COMMISSIONERS OF  
GRANT COUNTY



Manuel T. Serna  
Manuel T. Serna, Chairman



David C. Conway  
David C. Conway, Member



Carl W. Scholl  
Carl W. Scholl, Member

ATTEST:

Gabriel Ramos By Maria Contrillo  
Gabriel Ramos  
County Clerk