HISTORIC ROUTES PRESERVATION ACT OF 2013

I. METHODOLOGY

A. REVIEWED VARIOUS AUTHORITATIVE DOCUMENTS INCLUDING SIGNIFICANT STATE AND FEDERAL CASES (SEE LIST OF AUTHORITIES)

B. IDENTIFIED PUBLIC POLICY ADMINISTRATIVE AND LEGAL ISSUES UNDERLYING R.S. 2477 ROW GRANTS

C. CONSIDERED EVIDENTIARY REQUIREMENTS APPARENTLY NECESSARY TO PREVAIL IN QUIET TITLE ACTIONS CLAIMING ROW UNDER R.S. 2477 (MINING ACT OF 1866)

D. INCORPORATED EVIDENTIARY REQUIREMENTS INTO LEGISLATION AND DEVELOPED EFFICIENT LEGISLATIVE
II. FOUR PRIMARY ISSUES ADDRESSED WITHIN SCOPE OF PROPOSED 2013 ACT

A. WHAT IS REQUIRED TO ESTABLISH AN R.S. 2477 RIGHT-OF-WAY? RELEVANT STATUTORY LANGUAGE: "THE RIGHT-OF-WAY FOR THE CONSTRUCTION OF HIGHWAYS OVER PUBLIC LANDS NOT RESERVED FOR PUBLIC USES IS HEREBY GRANTED." OPEN-ENDED FEDERAL GRANT FROM APPROXIMATELY 1866 TO 1976 FLPMA

1. WHAT IS "CONSTRUCTION?" (MERE PUBLIC USE OR SOMETHING MORE, LIKE CUSTOMARY CONSTRUCTION ACTIVITIES?)
2. WHAT ARE "HIGHWAYS?" (MAJOR PUBLIC THOROUGHFARES?, OPEN TO VEHICULAR TRAFFIC?, SMALLER ROADS/TRAILS/PATHS?)

3. WHAT IS "RESERVED FOR PUBLIC USES?" (MERE IDENTIFICATION OF FEDERAL USE? IDENTIFICATION PLUS MORE?)

B. WHAT IS SCOPE OF THE ROW? (LIMITED TO TIME OF ACCEPTANCE?, EXPANSION ALLOWED TO ACCOMMODATE SAFE TRAVEL?, EXPANSION IN LIGHT OF CHANGED MACHINERY/TECHNOLOGY?)

C. DOES STATE OR FEDERAL LAW GOVERN? (ARGUMENTS ADVANCED FOR AND AGAINST EITHER FEDERAL OR STATE LAW APPLICATION -- ADVANTAGE TO JURISDICTION APPLYING THE LAW?)

D. WHO GETS TO DECIDE (CLASSIC IMBROGLIO INVOLVING STATE SOVEREIGNTY V. FEDERAL
SUPREMACY; LIMITATION ON ADMINISTRATIVE AND EXECUTIVE DISCRETIONARY ACTION)

III. SIGNIFICANT PERMANENT 1996 PROHIBITION BY CONGRESS THAT THE DEPARTMENT OF THE INTERIOR MAY NOT PROMULGATE ANY "FINAL RULE OR REGULATION...PERTAINING TO THE RECOGNITION, MANAGEMENT OR VALIDITY OF [AN R.S. 2477] RIGHT-OF-WAY UNLESS EXPRESSLY AUTHORIZED BY AN ACT OF CONGRESS SUBSEQUENT TO THE DATE OF ENACTMENT OF THIS ACT." THAT LAW REMAINS IN EFFECT TODAY.

IV. 2013 ACT PROVISIONS SELECTED FOR DISCUSSION (FOCUS ON DEFINITIONS AND EVIDENCE)

PAGES 6-9 (SELECT DEFINITIONS), AND 12-14, 15