



Kane County Commission
Daniel W. Hulet, Duke Cox, Mark W. Habbeshaw
76 North Main
Kanab, Utah
(435) 644-4901

December 16, 2008

Honorable Dirk Kempthorne
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Harry A. Barber, Manager
BLM Kanab Field Office
318 North 100 East
Kanab, Utah 84741

Rene Berkhoud, Manager
Grand Staircase-Escalante National Monument
190 East Center
Kanab, Utah 84741

Stan Austin, Superintendent
Glen Canyon National Recreation Area
U.S. Dept. of Interior
PO Box 1507
Page, AZ 86040

Re: Public safety related to snow removal on roads
across federally managed lands

Dear Sirs:

The Kane County Commission is aware that the Grand Staircase-Escalante NM, the Kanab FO, and the Glen Canyon NRA are not performing maintenance responsibilities on roads claimed to be under federal jurisdiction by the Department of the Interior.

The purpose of this letter is to ensure your understanding of the public safety hazards, federal liabilities, your present responsibilities regarding these roads, and to solicit cooperation and consultation between the Commission and federal land managers during the pendency of current litigation and administrative determinations, *i.e.*, Non-Binding Determinations (NBD) and Recordable Disclaimers of Interest (RDI).

The traveled surface condition of roads across federally managed lands is rapidly deteriorating due to the lack of federal maintenance and these continuing hazards have been communicated to the local managers by the Commission and members of the

public. However, the most immediate concern is the public safety hazard that people will be trapped during winter snowstorms or due to the accumulation of snow on roads from multiple storm events. Life threatening conditions will develop if federal land managers continue a policy of not maintaining roads currently claimed, and court affirmed, to be under federal jurisdiction.

If the BLM and the NRA fail to remove snow from segments of roads across federally managed lands, county road crews will be unable to reach many road segments under county jurisdiction to perform maintenance and public safety responsibilities.

Due to the serious public safety issues involved, the Commission requests a meeting to coordinate our mutual road maintenance and public safety responsibilities on Monday, December 22, at 2 PM in the Kane County Courthouse Commission Chambers. If that time is not convenient, would you provide an alternate date and time so that we can discuss these critical matters as soon as possible.

There appears to be a federal misunderstanding regarding the County's legal jurisdiction and responsibilities for roads across federally managed lands. The County would like to clarify the situation prior to the meeting so that the meeting can be as focused and productive as possible.

U.S. District Court Judge Tena Campbell recently affirmed Interior's twelve year-old position that Kane County lacks jurisdiction over highways across federally managed lands unless the County's jurisdiction is first determined by the courts. Interior further argued for, and obtained, a similar holding from U.S. District Court Judge Bruce S. Jenkins. These decisions are now on appeal and their resolution may ultimately affect the situation in Kane County regarding roads crossing federal lands. Nevertheless, these decisions, and the Utah Solicitor's Office express acceptance of their principles, now leave Kane County without jurisdiction of many roads historically regulated, maintained and operated by Kane County.

Despite Interior's long-standing position and in-court statements denying the existence of county highway rights-of-way, a few federal employees have publically stated that the Commission has "misinterpreted" the County's legal jurisdiction over highways. If your position is that the County currently has highway jurisdiction supporting a commensurate maintenance responsibility for any road across federally managed lands would you please advise the Commission of the County's specific statutory jurisdiction to work on the road where it crosses lands you manage? In the absence of your acknowledgement or further Court decision, the roads are, as Interior claims, federal roads and a federal responsibility.

Without confirmation of jurisdiction, the Commission is unable to accept the potential criminal and civil liabilities of performing work or management functions on any roads across federally managed lands until the County's jurisdiction is settled. In the mean time, maintenance and public safety responsibility for roads crossing federally managed lands belongs solely to federal land managers consistent with Interior's claimed jurisdiction over the roads.

The Commission is actively pursuing legal recognition or title to the County's congressionally granted rights through various legal and administrative means. The County is seeking Quiet Title, NBD, RDI, and Tenth Circuit Court of Appeals review in the two cases mentioned above.

It is disappointing that Interior agencies have refused to issue final determinations on several NBDs in over two and one-half years and are refusing to process RDIs. Those administrative actions could resolve road management, maintenance and public safety issues in an expeditious and cost effective manner. Instead of administratively acknowledging the County's rights as required in FLPMA § 701(a)(h), federal land managers, under Interior direction, are attempting to redefine those rights out of existence and force the Commission to abandon congressionally granted rights-of-way. The Tenth Circuit recognized that "most of the transportation routes of the West were established under [R.S. 2477] authority." See *SUWA v. BLM*, 10th Cir. The fact that Interior agencies do not recognize any R.S. 2477 rights-of-way in Kane County, the State of Utah, or across the West evidences a misuse of federal power.

The Commission does not intend to jeopardize the County's vested property interests in return for temporary permits or uncompensated road maintenance agreements. Interior cannot reasonably expect State and local governments to bear the incredible expense and liability of maintaining federal roads. The County hopes public land managers will not allow public safety to become a pawn facilitating Interior's strategy to eviscerate congressionally granted rights-of-way, or to try to force the County to replace its established rights with something less.

It is important to consider that federal land managers have freely implemented numerous adverse actions closing and restricting historic county highways, and have long claimed a lack of county jurisdiction without court adjudication. The result of Interior's policy of denying any R.S. 2477 rights-of-way, now court affirmed, is that federal land managers now have the responsibility for maintenance and public safety for all unadjudicated roads across federally managed lands in Kane County. Those responsibilities include the removal of snow in order to assure the public's safety during this winter season.

As always, the Kane County Board of Commissioners looks forward to working with you to resolve this pressing public safety matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel W. Hulet". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Daniel W. Hulet, Chair
Kane County Commission

cc: Selma Sierra
Todd Christensen