



Kane County Commission

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Sunday, May 3, 2009

To: The People of Kane County

From: Mark Habbeshaw, Commissioner

Re: BLM's intention to close the Paria Canyon road

BLM employees intend to close the Paria Canyon road to motorized travel within the next week to ten days because of pressure from environmental groups. The Paria Canyon road would be the first public highway actually closed in Kane County by federal action but it would not be the last. A large number of the people's historic roads are designated closed in the monument plan. Planning restrictions regarding types of vehicles allowed on roads would also be enforced in short order. People travelling our historic roads will be cited by federal employees to appear in federal court for failure to comply with federal planning provisions.

Environmental groups and federal land managers are on a symbiotic mission to take control of the peoples' established roads throughout the West. The local management of highways, founded upon congressionally granted rights-of-way across federally managed lands for the peoples' benefit, is perceived by federal land managers as interfering with their "control" of public lands. Local public highways also threaten environmental organizations' vision of extensive wilderness in Utah, and across the West. Wilderness, by definition, is roadless. In order to create extensive wilderness environmentalists must eliminate the peoples' roads.

The environmental/federal symbiotic effort to take the peoples' valid existing highway rights began in 1997 when Department of the Interior (DOI) Secretary Bruce Babbitt directed all Interior agencies to ignore Revised Statute 2477 rights. The monument plan ignored our highway rights and claimed federal authority over all of our roads in the monument. The BLM State Director directed BLM offices to ignore our highway rights in the recent Resource Management Plans. Those plans purport to close even more of our local highways.

Heretofore, the public has enjoyed access to all of Kane County's historic roads, open or closed by federal planning, because of the County Commission's efforts to protect the public's highways it manages for your benefit. The Commissioners have pro-actively pursued their fiduciary responsibility to protect and preserve your rights to access and cross public lands on the County's Transportation System Highways.

Kane County is at the Tenth Circuit level in *Kane County v. Salazar* and *The Wilderness Society v. Kane County* (oral arguments May 6). Kane County has filed Quiet Title on fifteen of our highways. Kane County has taken deposition testimony under a Rule 27(a) Petition, which

excluded environmental intervention. Kane County submitted “non-binding determinations” almost three years ago to resolve highway jurisdiction regarding four of our highways. The County was stonewalled in its efforts by the BLM, which refused to make any final decisions. The DOI and the BLM have fought the County’s every effort to affirm R.S. 2477 jurisdiction over any of our public highways.

Administrators within the DOI and the BLM do not recognize any R.S. 2477 rights in the Nation and intend, by administrative fiat, to defeat the peoples’ established, congressionally granted rights. There is no operation of R.S. 2477 rights in the Nation because none have been adjudicated or administratively accepted.

I was recently informed that in closing the Paria Canyon road BLM employees are saying that the County should have filed formal R.S. 2477 action two years ago. That position is equally as disingenuous as the BLM’s position that the County is obligated to maintain federal roads. Both of these claims are attempts to shift the responsibility for closing the peoples’ access to public lands away from federal land managers and to the County.

Let me explain. The U.S. Congress granted R.S. 2477 highway rights in order to facilitate settlement of the West. The highway grants were offered and accepted as rights-of-way across federally managed lands for a period of 110 years. In 1976, R.S. 2477 was repealed in the FLPMA but all congressional rights established by October 21, 1976 were protected in § 701(a). In addition, the DOI and the BLM were statutorily directed that all federal actions shall be consistent with valid existing rights in § 701(h). Case law, including *SUWA v. BLM*, 10th Cir., affirms that highways established by 1976 continue as to public use and maintenance. The DOI and the BLM, however, refuse to accept either statutory or case law that preserves your rights of public access to and across public lands.

A recent BLM memorandum regarding “RS 2477 Claims” stated, “On February 20, 2009, the Acting Director on behalf of the Secretary issued a memorandum directing all BLM offices to not process or review any claims under R.S. 2477, including the use of the disclaimer rule. (emphasis added). The memo further stated, “To not delay valid requests for access, BLM has encouraged county and state governments to process the road authorization under FLPMA rights-of-way.” (emphasis added). This memo documents the DOI and the BLM’s intent to defeat the peoples’ congressionally granted rights of access to public lands and to replace established property rights with a permitted-use Title Vs allowing the BLM to close and restrict the peoples’ highways, as in the case with the Paria Canyon road.

The BLM contacted the County about the Paria River road over a year ago. The County explained that the road follows its historic course and requested a field trip to study conditions within the canyon. During the field trip, BLM managers stated they did not see any conditions amounting to impairment or degradation of the wilderness study area and no need to close the canyon to motorized travel.

Prior to U.S. District Court Judge Tena Campbell’s ruling and injunction ejecting Kane County from its roads, there was no requirement for Quiet Title adjudication. In order to file a Quiet Title action there must be a case for controversy, an injury, or harm. Federal attorneys are arguing that planning provisions, without implementation, do not support QT litigation. The County could not successfully bring QT action so long as the Paria River road was open to public travel.

Claims by BLM employees that they would act responsively to formal county requests regarding the recognition of the Paria Canyon road, or any other county roads, are simply untrue and amount to no more than PR spin crafted to evade federal responsibility for taking the peoples' highways and managing them as federal roads or non-roads.

The impending closure of the Paria River road needs to become the symbol for the people of Utah to stand together and act in concert with their elected officials and State legislators who are attempting to preserve multiple use of our public lands in Utah. Elected officials cannot win this fight alone; the people have to become active in demanding federal accountability in Utah. The people of Utah need to become knowledgeable about the issues and not fall prey to federal PR and spin. Look at federal employees' actions rather than their words which are crafted in a bureaucratic effort to shift responsibility and blame away from federal land managers on onto local officials and legislators who are doing their best to protect your interests.

Federal claims that the County should have filed NBDs or QTs on the Paria River road or that the County is obligated to maintain federal roads is nothing more than PR spin to cover the actual truth: federal land managers are taking your historic rights to access federally managed lands. The DOI and the BLM have steadfastly refused to issue a final administrative decision recognizing any of the peoples' highway rights. Federal land managers play us with empty processes giving hope for resolution but without any intention of ultimately acknowledging the existence of your long-standing rights of access.

The attached letter documents that Kane County submitted a formal request to the BLM to conduct an administrative determination of highway rights prior to any federal adverse action against the Paria Canyon road. The letter should quell any federal claims that the County did not formally assert its rights along the Paria Canyon or ask the BLM to provide the County due process regarding the peoples' rights. The letter clearly evidences a federal failure to accept congressionally granted highway rights held by the people of Kane County. In addition, the County submitted freedom of information requests seeking documents that environmental organizations submitted regarding the Paria Canyon. The BLM refused to provide the County the requested information.

In your discussions with BLM employees ask which roads in Kane County are under R.S. 2477 jurisdiction. Ask why the DOI/BLM do not recognize any R.S 2477 rights in Kane County, the State of Utah, or in the Nation. Ask why they are deferring to environmental organizations in closing the peoples' access when the U.S. Supreme Court ruled that environmental organizations cannot dictate planning implementation to federal land managers. Ask what harm results from the public travelling historic roads. Ask if they personally agree with DOI/BLM administrative direction such as the closure of the Paria River road. Ask them if they are personally willing to stand up for the rule of law and do the right thing. It is important to consider that federal employees, not agencies make unjust, adverse decisions.

The Paria Canyon road must become the issue that brings the people together to oppose and protest federal actions threatening what little sovereignty we have left as a rural people.

Sincerely,
(e-signature)
Mark W. Habbeshaw
Commissioner

Attachment: County letter of March 17, 2008 to Selma Sierra regarding the Paria Canyon road
February 2009 DOI direction to ignore R.S. 2477 rights